

S. Hrg. 109-684

**EARMARK REFORM: UNDERSTANDING THE
OBLIGATION OF FUNDS TRANSPARENCY ACT**

HEARING

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, AND INTERNATIONAL
SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MARCH 16, 2006

Printed for the use of the Committee on Homeland Security
and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

27-752 PDF

WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SUSAN M. COLLINS, Maine, *Chairman*

TED STEVENS, Alaska	JOSEPH I. LIEBERMAN, Connecticut
GEORGE V. VOINOVICH, Ohio	CARL LEVIN, Michigan
NORM COLEMAN, Minnesota	DANIEL K. AKAKA, Hawaii
TOM COBURN, Oklahoma	THOMAS R. CARPER, Delaware
LINCOLN D. CHAFEE, Rhode Island	MARK DAYTON, Minnesota
ROBERT F. BENNETT, Utah	FRANK LAUTENBERG, New Jersey
PETE V. DOMENICI, New Mexico	MARK PRYOR, Arkansas
JOHN W. WARNER, Virginia	

MICHAEL D. BOPP, *Staff Director and Chief Counsel*

JOYCE A. RECHTSCHAFFEN, *Minority Staff Director and Chief Counsel*
TRINA DRIESSNACK TYRER, *Chief Clerk*

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND
INTERNATIONAL SECURITY SUBCOMMITTEE

TOM COBURN, Oklahoma, *Chairman*

TED STEVENS, Alaska	THOMAS CARPER, Delaware
GEORGE V. VOINOVICH, Ohio	CARL LEVIN, Michigan
LINCOLN D. CHAFEE, Rhode Island	DANIEL K. AKAKA, Hawaii
ROBERT F. BENNETT, Utah	MARK DAYTON, Minnesota
PETE V. DOMENICI, New Mexico	FRANK LAUTENBERG, New Jersey
JOHN W. WARNER, Virginia	

KATY FRENCH, *Staff Director*

SHEILA MURPHY, *Minority Staff Director*
JOHN KILVINGTON, *Minority Deputy Staff Director*
LIZ SCRANTON, *Chief Clerk*

C O N T E N T S

Opening statements:		Page
Senator Coburn		1
Senator Carper		4

WITNESSES

THURSDAY, MARCH 16, 2006

Hon. Jeff Flake, a Representative in Congress from the State of Arizona	6
Hon. John McCain, a U.S. Senator from the State of Arizona	10
Thomas A. Schatz, President, Citizens Against Government Waste	14
Steve Ellis, Vice President of Programs, Taxpayers for Common Sense Action	16
Scott Lilly, Senior Fellow, Center for American Progress	18

ALPHABETICAL LIST OF WITNESSES

Ellis, Steve:		
Testimony	16	
Prepared statement	51	
Flake, Hon. Jeff:		
Testimony	6	
Prepared statement	39	
Lilly, Scott:		
Testimony	18	
Prepared statement	57	
McCain, Hon. John:		
Testimony	10	
Prepared statement	41	
Schatz, Thomas A.:		
Testimony	14	
Prepared statement	43	

APPENDIX

Charts submitted for the Record from Senator Coburn	27
---	----

EARMARK REFORM: UNDERSTANDING THE OBLIGATION OF FUNDS TRANSPARENCY ACT

THURSDAY, MARCH 16, 2006

U.S. SENATE,

**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.***

The Subcommittee met, pursuant to notice, at 9:32 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Tom Coburn, Chairman of the Subcommittee, presiding.

Present: Senators Coburn and Carper.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. The Subcommittee will come to order.

Good morning. We have convened this hearing to look at the need for earmark reform and legislation that would be an important step toward achieving such reform.

Pork politics is not an ancient practice that can't be reformed. Pork, as we know it today, didn't exist 20 years ago. In 1987, President Ronald Reagan vetoed a spending bill because it contained 121 earmarks. Disturbingly, the number of earmarks has skyrocketed over the past decade—from 4,126 in 1994 to 15,887 in 2005—according to the Congressional Research Service.

Last year, the number of earmarks dropped to 12,852, but the total cost of the earmarks rose by \$16 billion last year to a total of \$64 billion, not including the highway bill, the earmarks that are contained in the highway bill. And those are truly authorized earmarks in the highway bill.

America's greatness was built on sacrifice and service, not the politically-expedient politics of pork. There is no lost Article of the Constitution or missing Federalist Paper that gives Members of Congress a blank check to fund any project they desire.

Indeed, Thomas Jefferson wrote James Madison in 1796 that allowing Congress to spend Federal money for local road projects would “be a source of eternal scramble among the members [for] who can get the most money wasted in their State, and they will always get most who are meanest.”

Jefferson's prophetic warning has been borne out by the reality that there exists an indisputable linear relationship between the runaway spending of the last 10 years and a markedly increased earmarks, as you can see from the other chart.

The truth is earmarks are a gateway drug on the road to spending addiction. One day, an otherwise frugal member votes for pork, the next day, he or she votes for a bloated spending bill or an entitlement expansion. After all a “no” vote might cut off access to earmarks.

Congressional leaders and appropriators use earmarks as a leverage to get members to vote their way—often for monstrous spending bills that a member otherwise might oppose. In other words, earmarks help grease the skids for bigger government—not necessarily more efficient government, not necessarily better government.

The task of selecting a share of the 15,000 annual pork projects has become an all-consuming endeavor for most congressional offices. Gathering earmark requests, meeting with lobbyists, working to secure a coveted seat on the Appropriations Committee leaves little time for the traditional duties of overseeing government and reforming outdated programs.

And we see the consequences of this neglect: In recent years, layers of government waste have gone virtually ignored, and bloated agencies have failed to deliver basic services, but their budgets are just increased each year as if on auto-pilot. Congress has failed miserably in its oversight responsibility.

For example, last year the Department of Education told the *Washington Times* that it was facing “a significant challenge to process and monitor all of these earmarks.” This was in reference to 1,175 congressionally mandated projects in small print taking up 40 pages of the 663-page omnibus spending bill.

The next chart shows a comparison between earmarks and entitlement savings.

Some congressional critics of earmark reform make the excuse that getting rid of earmarks isn’t the solution to reigning in runaway spending, controlling entitlements is. But as we saw with the recent budget reconciliation bill, Congress was barely able to trim even a relatively tiny amount of entitlement spending.

While earmarks cost \$64 billion last year, entitlement savings from budget reconciliation was only \$4.8 billion. And its estimated savings over 5 years was just \$38.8 billion.

If Congress is unable to eliminate the most unjustifiable spending—which earmarks usually are—then how could it possibly make tougher choices on politically charged entitlement programs like Medicare and Social Security? Given current and future national debt realities, we cannot afford to spend money on these individual pet projects.

Even if the individual projects had merit—and many do, and I am sure that most of them have good-hearted and honest constituencies in their support—those merits for a small parochial interest have to be weighed against the broader risks of the out-of-control growth of earmarking and the long-term financial health of the United States.

Earmarking can lead to outright corruption, as seen in the recent guilty plea of former Representative Duke Cunningham for bribery over an earmark of money for his district. Reducing or eliminating earmarks would help reduce the power of lobbyists, who often raise

campaign money for Members of Congress if they slip an earmark into a bill that benefits a lobbyist's client.

Next you will see posters of two lobbyists' Web sites with some pretty revealing quotes.

The Web sites of these top lobbying outfits make no bones about their ability to serve up pork for their clients. All of the sites stress the firms' cozy relationship with members and their staff and highlight their employees' previous government experience as a signal to potential clients that they are networked into the pork game.

Many sites outright brag about the amount of earmarks they have secured for clients. The two examples that you might see—and this is just two of many. First is a blown-up poster of a lobbying firm's Web site with quotes of interest pulled out for viewers to read.

The quote states, "Each year, our attorneys secure hundreds of millions of dollars in Federal funds for a wide range of clients. We have successfully designed and implemented strategies to win Federal funds for hundreds of new programs, to keep controversial programs funded, to increase funding for client priority programs, and, when called for, to initiate for programs not requested in the budget.

"Many of our attorneys are veterans of congressional committee staffs or Federal offices and, thus, know the budget process from both sides, giving them a depth of perspective on the process that greatly benefits our clients."

The second lobbying firm's Web site, "Collectively, our Federal practice group possess an intricate knowledge of the 13 annual Federal funding bills and the methods for obtaining identified appropriations from a variety of accounts. We have a strong relationship with numerous key members and staff in both House and Senate and a knowledge of precisely how, where, and when to intervene to achieve desired results.

"Although success is never guaranteed, the fees that our clients pay in pursuit of legislative appropriations are almost always greatly exceeded by the amount of funding they receive. For fiscal year 2004, this group obtained \$334 million for our appropriation clients."

While there is nothing inherently wrong with lobbying *per se*, earmarking in particular develops an unhealthy relationship between members, their staff, and the lobbyists seeking favors. According to the *Wall Street Journal*, the number of companies hired to pursue earmarks has doubled since 2000. According to the Center for Public Integrity, the commonly lobbied issue is budget and appropriation—6,800 companies as of 2005.

The willingness of those in power to abuse the appropriation process through earmarking has led to an explosive growth in the lobbying industry and encouraged the excesses illustrated by the Cunningham and Jack Abramoff scandals.

Abramoff has described the appropriation committees and, by extension, the appropriation process, as an "earmark favor factory" in which influence and votes are bought and sold. I believe Senator McCain's legislation—which I proudly co-sponsored—and its companion in the House, sponsored by Congressman Jeff Flake, is an

important first step in a process that should ultimately lead to the shutdown of this process.

This legislation would require that earmarks be placed in the text of legislation rather than the committee reports that accompany bills. Under current practice, committee report language directs Federal agencies to spend money on particular earmarks—and the agencies have learned that congressional appropriators will retaliate if their language is ignored, even if it's in the national interest to ignore it.

Next is a recent Congressional Research Service report that shows that 96 percent of the 12,852 appropriation earmarks in FY2006 were hidden within the report language. That means the language was slipped in behind closed doors, at the last minute, or in the middle of the night. Everyone knows that the conference reports become public almost immediately before they have to be voted on, which makes it almost impossible for members to know what they're voting on or for.

Earmarks need transparency and time for debate to make sure each item is considered on its own merits and in light of the competing priorities that this country faces. Tucking earmarks into a conference report prevents taxpayers from the benefit of debate and disclosure about how their money is being spent. Requiring earmark projects to be a part of actual legislation would also make it easier for legislators to challenge them by offering amendments to change or strike them.

Transparency and debate will also reduce the value of earmarks as an instrument for party discipline by leadership in appropriators. And, shining light on these pet projects will help ethics compliance by curbing the incentive for members to take campaign donations from special interests.

Ideally, forcing lawmakers to defend projects will expose them to ridicule and, eventually, the practice of earmarking—and the out-of-control spending it leads to—will slow.

The truth is Congress will never take meaningful steps to tackle our enormous fiscal challenges as long as it indulges with impunity in a practice that creates a culture of complacency.

They say every cloud has a silver lining. I believe that the various lobbying and earmark-related scandals, both real and imagined, have opened a unique window of opportunity to enact reforms now that may not ever come again. If Congress fails to pass meaningful reforms that attack this climate of corruption at its source, the public will, and should, take reform into its own hands in November.

I want to thank our witnesses for being here today, and I look forward to our dialogue.

Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman.

It is good to be with you, and I want to welcome Congressman Flake. I don't think I have ever met you before. And so, just very nice to have a chance to meet you.

I am going to listen to your testimony, and then I am going to have to slip out.

Today, we hold this hearing as the Senate debates the budget for the debt ceiling. We are going to be asked to vote, probably later today, to raise the debt ceiling by about three quarters of a trillion dollars.

And that will mark, I think, the fourth time we have been asked to raise the debt ceiling in the last 5 years. And we have gone from a time when we had balanced budgets—literally, surpluses as far as the eye could see—to a time when we have deficits for as far as the eye can see.

And as baby boomers, my generation, are moving toward retirement, the situation doesn't look brighter. In fact, it looks bleaker. As a result, I think we have to look in every corner of where we spend money or how we bring money into this Federal Government of ours to make sure that we are doing all we can do to reverse our slide into fiscal insanity and to get back on the right track.

There are a lot of things that we can be doing. We have talked, in fact, we have had hearings about some of those. One of them is just to collect the monies that are owed to the U.S. Treasury. IRS reported to us just weeks ago that about \$290 billion in tax revenues that were owed to the Federal Government last year were not collected—\$290 billion.

We have had a series of hearings on improper payments. And it turns out that the Federal Government makes a lot of payments, mostly overpayments, for things that we ought not to be doing, and it is about \$50 billion. It is real money.

We know that some of the folks who benefit from entitlement programs, frankly, make enough money that they probably should be means tested and that we can go to, not to balance the budget on the backs of folks who depend on entitlement programs, but there is money that can be saved, particularly from those that are more affluent and who are eligible for entitlement programs.

We get to the issue of earmarks, and it reminds me a little bit of what we used to have in our State. Maybe you have it in Oklahoma or Arizona as well, but we had something called a grant in aid package that would come through the legislature every year.

We would pass an operating budget. We would pass a capital budget. And the legislature itself would put together a grant in aid package. And the grant in aid package would allow each of the legislators to pick their favorite good cause—and they were good causes. I mean, Boy Scouts, Girl Scouts, boys and girls clubs. Any number of nonprofits doing the Lord's work in a whole lot of ways—and it was beginning to take more and more of the budget.

And one of the things that we did in our State, and I think they probably have done in other States, is to say it is not inherently bad to have a grant in aid package, but to limit it to some percentage of the overall spending so that it just doesn't continue to grow.

When I look at the charts that we see this morning, the thing that concerns me is not so much that we do have earmarks, but that the trend is going in the wrong direction. It especially is going in the wrong direction now as the budget deficit gets larger and larger.

The last thing I would say. The thing that troubles me most about earmarks is the idea that if you pass a House bill, it doesn't have a provision in it. The Senate passes an appropriations bill, it

doesn't have a provision in it. And when a bill comes out of conference and there is a provision in it that wasn't in either bill going in, that is not good.

And that, in terms of reforms and things to change, I think, will get at least my support for cleaning that up and I suspect the support of a lot of us.

Congressman Flake, welcome. Glad to see you, and look forward to your testimony.

Senator COBURN. Congressman Flake, thank you for being here. Congressman Jeff Flake presently is serving his third term in Congress, represents the 6th Congressional District of Arizona. He serves on the House Committees on the Judiciary, the Committee on International Relations, and the Committee on Resources.

Congressman Flake, your entire testimony will be made a part of the record, and you are recognized.

TESTIMONY OF HON. JEFF FLAKE,¹ A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. FLAKE. Thank you. I appreciate the opportunity to be here, and I want to commend you, Senator Coburn, for your lead on earmark reform and for all you have done in this area and for co-sponsoring the legislation that we have in the House.

And Senator Carper, thank you for what you are doing, and your recognition as far as conference reports and what is going on there with earmarks being airdropped in at the last minute truly is a growing problem. And it is something that is addressed by this legislation.

I think it is appropriate that you are having this hearing today. I am not sure what deadlines the Senate has, but the biggest deadline in Congress on the House side is today. It is the deadline for submission of earmark requests before the Appropriations Committee.

You have a lot of staffers from district offices in Washington this week that wouldn't be otherwise. You have lobbyists on the Hill in droves that wouldn't be otherwise. After today, this is kind of like April 15 for accountants. When today is gone, many lobbyists' work is done for the year. There will be a run on the airport tonight for the Bahamas, I think. This is what this process has become.

My office, we don't do any earmarks, but still we get lobbyists hoping that we will change our mind, apparently, because we got this year several request forms already filled out for us. Typically, the practice is these request forms from the Appropriations Committee come to the member offices. The members will simply turn them over to lobbyists, who will fill them out, give them back to the members, sign them, and turn them in.

And we received several filled out. Just all that was needed was my signature to make earmark requests. I would submit that when that is what the process has become, we have a problem, a huge problem.

Senator Coburn outlined the trend that we are on in terms of earmarks. It is not a pretty picture. It is exploding. Depending on how you define an earmark—it is anywhere from \$4,000 to \$15,000

¹The prepared statement of Mr. Flake appears in the Appendix on page 39.

or \$2,000 to \$14,000—in any event, any way you look at it, it has exploded and under our watch as Republicans. And I think it is nothing to be proud of.

You mentioned the CRS study that was just released, indicating that 96 percent of earmarks are in conference reports or committee reports. They aren't contained in the actual legislation. What that means is that individual members simply have no access to challenge those earmarks.

We talk a lot about giving the President line-item veto authority. I think that he ought to have it. I would be more pleased if we had it. And we have given it up. When we legislate by report rather than actual legislation, we have given up our ability to challenge individual spending items.

I have pointed out before that had any of us suspected that Duke Cunningham had been bribed to get any of the \$90 million in earmark that he allegedly got for his clients, we couldn't have stopped very many of them, if any, because they were contained in conference and committee reports that we simply don't have access to. That is a problem, and that is something that we have got to stop.

H.R. 1642 and the companion bill in the Senate, as you mentioned, Senator Coburn, simply say that if you want an earmark, you have got to put it in a bill. And members ought to have access to that bill on the House floor.

But when it comes to conference reports, conference reports by definition are unamendable when they get back to the floor. So there has to be a process, a point of order protection, something that prevents earmarks from being the term that is used is "airdropped in" at the last minute.

And I am afraid that if we shut down the process at the committee level and make sure that earmarks have to be in the bills there, then the trend will be—and we don't shut down the conference report process, then all earmarks will simply shift to a later stage, and there will be even more incentive to move them where they cannot be accessed at all.

There is some discussion about even if we don't allow the earmarks into bills, that we have access through limitation amendments on the reports. But if we do that, then we will have to tighten up the rules in the House because, as it stands, the House can waive rules, and does, requiring that committee reports even be there on the floor when the legislation is voted on. And unless we tighten that process, all we will have is reports being approved after the bill has already passed.

You mentioned earmarks as the gateway drug to spending addiction. That is the best description that I can think of. People will point out, well, it is only a small percentage of the budget. But what we have seen over the past couple of years with the spending increases that we have seen, it has coincided with the number of earmarks.

Typically, if you have an earmark in a bill, you can't vote against that bill, or you might lose your earmarks in the conference committee. That is the game that is played in the House. And so, you have members supporting bloated appropriation bills that they wouldn't support otherwise. And so, it simply balloons spending everywhere. The earmarks are more important than the sum of their

parts in terms of dollar value because they simply leverage higher spending everywhere else.

We had a discussion the other day in the House as to whether or not there is a constitutional right to earmark, and it was a fascinating discussion. Members will point out Article 1, Section 9, Clause 7, saying that it is the Congress's power to appropriate. Certainly it is.

But we ought to point out that James Madison in 1817 vetoed the first appropriation bill with earmarks. Didn't feel it was proper to do so. It has been debated since then. The Supreme Court has ruled a couple of times and has simply said that Congress makes the determination.

So Congress can say that earmarking is proper, but if you accept the notion that it is OK for Congress to have an earmark for an indoor rainforest in Iowa, then it begs a question, what kind of funding would be unconstitutional? Where does it stop? Where does parochialism end in this sense?

So this legislation is important in that it brings not only transparency, but just as important, it brings accountability. You not only have to have names associated with earmarks and shine more light, there has to be an ability for members to be able to stand up and challenge.

It is interesting that some of those who will claim a constitutional right to an earmark will go further and claim that they should have a right to have an earmark without that funding even being scrutinized by other Members of Congress because they know their district better than anyone, and they should have a right to actually decide what funding goes there.

I think that is dangerous territory for anybody to be in, and for those who pretend to believe in limited government, it is simply inconsistent with that philosophy. But with that, I have the statement in the record, and I will be glad to answer any questions you might have.

And thank you again for the invitation to come here.

Senator COBURN. Let me ask you a couple of questions. Hopefully, Senator McCain will arrive.

What you often hear from Members of Congress is that if we don't earmark, then there is an uncontrolled bureaucracy that will spend the money any way they want. First of all, what is your response to that? And second, is there any truth to it? And is there a constitutional solution to that if, in fact, it is true?

Mr. FLAKE. Well, we have a process in Congress, a carefully designed process of authorization, appropriation, and oversight. And the problem with earmarks is they circumvent that process.

For those who say that we need to be able to tell the Federal agencies that they are not spending in a way that we outlined or that is proper, we kind of lose all credibility.

For example, in this past year's defense bill, when we criticize the Department of Defense for not spending sufficient funds on body armor. Yet we earmark more than \$1 million for a museum in New York in the defense bill. What kind of credibility do we have, as Members of Congress, when we stipulate that kind of spending?

So it has really taken away our ability to have proper oversight because we simply can't pass the laugh test when we criticize Federal agencies for profligate spending or for not following the dictates of the Congress because here we are saying you have to spend money. Here is our spending instructions on the Punxsutawney weather museum in Pennsylvania or the Cowgirl Hall of Fame. It is simply we have a process of oversight, and earmarks simply circumvent that.

Senator COBURN. So the fact is the Congress has not done its oversight?

Mr. FLAKE. You bet. No doubt. We simply aren't doing oversight, and I think it is largely because it is embarrassing, once we get into it, to actually confront the same Federal agencies that we have stipulated should spend money on 800 projects of questionable value and then to try to tell them that they are not spending money properly.

And for those who say we are simply spending money that is authorized or appropriated anyway, and we are simply deciding where it is spent, we are earmarking accounts that we never dreamed of earmarking in years past. There are certain agencies—the FAA, for example, that has designated accounts for maintaining runways or towers. When we earmark accounts like that, then the next year, those agencies have to come back and maintain those runways, those facilities. Yet the accounts they have to do that are gone. And so, they will have to come back and ask us to backfill those accounts. And so, it simply leads to higher spending everywhere else.

With regard to transportation, the transportation bill is an authorization bill, but it acts like an appropriation bill. And the trend has been to actually spend less money on highways and roads and methods that actually promote mobility or pollution abatement because typical Members of Congress will say I want a long list of earmarks that I can claim credit for. And so, they will have a transportation museum or a beautification of this street or a bike path here. So they can have a long list, and it typically drains money away from the infrastructure that the gas tax was intended to fund.

Senator COBURN. In your oath of office, when you take an oath of office as a congressman for the United States of America, is there anything in there that says your obligation is to bring the most back for your State? Is there anything in that oath that would imply that?

Mr. FLAKE. Nothing that I have discovered. And I can tell you a lot of my colleagues are tired of this process. They simply are tired of being an errand boy for the local mayor, tired of having so much staff time spent on securing these earmarks. And so, it is a problem.

One reporter approached me the other day and mentioned that he had just read Mo Udall's old book, "How To Be A Congressman." Mo Udall came here in a special election, famous Arizonan, and he didn't get any introduction or instruction on what to do. So he wrote a book on what a Member of Congress is supposed to do.

That reporter pointed out that nowhere in the book were earmarks mentioned at all. This is a recent phenomena. You pointed

that out. There have been earmarks in years past, but it is typically just in the Appropriations Committee, just an appropriator here or there, and they tended to be a little more judicious with it.

In fact, in our discussion the other day, when we were discussing earmarks in the policy committee of the House, one member mentioned, "Well, let us get a little institutional perspective. How did earmarks work in the 1980s?"

And they asked one of the members that was there in the 1980s. This member said, "Well, I can't tell you. We didn't get any then. It was different. I only discovered a few years ago that I could do this, but it is wonderful."

And so, it is a recent phenomenon, and it has simply become out of control in the last couple of years.

Senator COBURN. One last question for you, Congressman Flake. Can Arizona, as a State, be viable and healthy if the United States is on a financial tailspin?

Mr. FLAKE. No. And the notion that you are a Member of Congress, it is your job to bring home the bacon because that is in the best interest of your district simply doesn't square with reality.

If we continue with this process and continue out-of-control spending that is really fostered with these earmarks, every district, every State is worse off. And that is why we have to change the process.

Senator COBURN. Thank you. Senator McCain, welcome.

TESTIMONY OF HON. JOHN McCAIN,¹ A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you very much, Mr. Chairman.

And could I just add on to Congressman Flake's comment and his personal example?

I believe that Congressman Flake has shown enormous courage, and a friend of his and mine decided to challenge him in a primary because he didn't bring home the bacon, because he didn't have enough "earmarks." And I am happy to tell you that Congressman Flake won overwhelmingly, and that was probably the key issue associated with that primary, wouldn't you say?

Mr. FLAKE. Let me just say I had a good example to follow here.

Senator MCCAIN. But Mr. Chairman, if there is such a thing as preaching to the choir, it is testifying before you today—or maybe preaching to the preacher.

I want to thank you for everything you have done. I think that every American home should see these two charts.² And I know that we are doing our best to get them around.

One of the issues that I did want to discuss is this placement in the conference report of earmarks. This is an insidious and ever-growing practice that is really unconscionable because, according to law, conference reports don't have the force of law. But as soon as the bill is passed, the various agencies get a phone call and say, hey, it is in the conference report, and you better treat it as law. In fact, I think a couple of times it has been written into the bill

¹The prepared statement of Senator McCain appears in the Appendix on page 41.

²The charts referred to appear on pages 29 and 34 respectively in the Appendix.

that the provisions of the conference report will have the force of law.

Mr. Chairman, you and I don't have the ability to remove those from the conference report when we are in debate on the floor and when we discuss the provisions of a bill. We can go after the earmarks in the bill itself, but we can't the conference report. So we have to ban it. And I really believe that the time is right now for it.

I was down in Memphis last weekend with a group of the party faithful from all over the country, but mainly from the South, and it was obvious to me from my remarks to them—but more importantly, from their remarks to me—that they know this has got to stop. That we are mortgaging our children's futures.

And I think that we have our base energized. They support us. I think the majority of the American people support us, no matter what their party affiliation is. And this is a time to act, and we will be able to do it, I believe, when we take up the lobbying reform.

And Mr. Chairman, I was thinking last night in anticipation of appearing before you today, if, for some reason, this reform bill does not proceed, then, Mr. Chairman, I think you and I and our other colleagues have just got to start slapping it on as amendments on bills.

We can't let another appropriations cycle go by. The appropriators are already beginning to shape their bills. We cannot let another cycle go by with the kind of activity such as is described on that chart.

So, Mr. Chairman, I would appreciate it if you would allow my complete statement to be made part of the record, and I know you have to proceed. But committee reports and manager statements do not have statutory force. They cannot. And departments and agencies are not legally bound by their declarations, as we stated in a letter to the President of the United States just last week.

I thank you, Mr. Chairman, for all you do, and I appreciate you for the courage you continue to display and the leadership you continue to give those of us who are interested in fiscal responsibility.

And I am very pleased and proud of my colleague from the State of Arizona. It is a little tougher environment over there in the House, as you know, and he shows a great deal of courage.

Senator COBURN. Thank you, Senator McCain. Your entire statement will be made a part of the record.

Senator MCCAIN. Sometimes my entire record is made part of my statement. [Laughter.]

Senator COBURN. Yes, well, it comes with you. That is for sure.

I want to thank you for coming here and thank you for what you have done. There is no question you have been a leader on this issue in the Senate for years.

I want to ask a couple of questions. When a House bill comes to the Senate floor today, an appropriation bill, and we are considering it, do we have any knowledge of the earmarks from the House?

Senator MCCAIN. I don't think so, unless we have had an opportunity to see the bill.

Senator COBURN. But the record is not a part of what we are voting on. Is that correct?

Senator McCAIN. That is correct, sir.

Senator COBURN. So the senators in the Senate chamber are voting on, they can have access on a delayed basis and oftentimes untimely basis to the report language in the Senate. But that does not include the report language from the House, does it?

Senator McCAIN. No, sir.

Senator COBURN. So, in essence, the Senate, every time they vote on an appropriation bill, has no knowledge of the earmarks from the House on the bill that they are voting on. Is that correct?

Senator McCAIN. Yes, sir.

Senator COBURN. And so we don't know what we are voting on on appropriation bills, based on what the earmarks are that are coming from the House?

Senator McCAIN. That is exactly correct. And even if we did, sometimes, as you know—not sometimes, but all too frequently—the bill is completed in the middle of the night the night before we are supposed to go into recess. By unanimous consent, it is brought. It appears on our desk, and then we vote.

And everybody wants to leave to go into recess. So, therefore, any bad guys that want to examine the bill or make changes or amendments are under enormous pressure not to do so. And we have not only seen this with individual appropriations bills, but unfortunately, quite frequently, with omnibus bills—omnibus stacking them all together.

And then we are shocked, shocked and surprised weeks and months later when we find out that provisions were put in which we find incredibly bad.

Senator COBURN. What do you think—

Senator McCAIN. Do you want to say something, Jeff? Go ahead.

Mr. FLAKE. I just want to point out, the House—and I am not sure what the Senate rules are—but the House actually has some pretty good rules to prohibit this kind of airdropping of earmarks into a conference report, but we waive them routinely. We waive all points of order lying against a bill.

Otherwise, anyone could stand up and say there is non-germane—in this case meaning spending that wasn't authorized by either the Senate or the House—in the bill. But we waive those rules. And that is what this legislation is all about, an effort to say we simply will enforce our own rules that we have. And I don't think that is too much to ask.

Senator COBURN. What is the likelihood of this legislation to pass in the House?

Mr. FLAKE. Well, today, we will find out what is part of the earmark reform proposal that will be in the lobbying reform. And the last check, as of last night and this morning, is that we aren't dealing sufficiently with the conference report angle.

There is some movement on if not putting all language, earmark language in the bills during the committee process or the appropriation process, at least allowing members access through limitation amendments to the committee reports.

But the problem with that is as along as there is an out with the conference report, that is where the earmarks will go. If members fear that their earmarks may be seen or singled out in that proc-

ess, they will simply airdrop them into the conference report at the end of the process, and we aren't moving yet to close that down.

Senator COBURN. Senator McCain, do you have any experience or knowledge with the fact of what would happen if an agency didn't follow conference report language in terms of the expenditure of money?

Senator MCCAIN. Then there are implicit threats of cuts in travel, administrative costs, etc., and other threats to cut programs that are of high priority to the people in those bureaucracies. I know it happens. It is not done in writing.

Senator COBURN. So, basically, you have—

Senator MCCAIN. You have the powerful committee chair people, members of the committee that are responsible for the funding of an agency saying treat these provisions as law. And if you don't, then there will be repercussions.

And I know that happens, and I doubt if we could find a single member of those agencies who would come over and testify before you that it is true. But they certainly have told me that many times.

Senator COBURN. So, basically, you pass a report language that does not have the force of the law, that most of the time is not available to the members of either body when they have to vote on it, and then you have leverage applied, coercion applied. Is the answer does the President have to spend this money?

Senator MCCAIN. No, sir. Jeff, did you want to answer?

Mr. FLAKE. Just on the agencies, it is even more pernicious than that. I have actually been contacted by somebody from a Federal agency who said that they will sometimes get calls from the Appropriations Committee, from staff after a bill has passed and saying, "We forgot to include this earmark. Can you fund it as if it were included?"

And I joked at the time that this is what our oversight has come to. "We made an oversight. We forgot to put this in. Can you fund it anyway?"

But as Senator McCain said, they simply can't afford not to fund those requests, or they are punished in the next year.

Senator COBURN. Yes. And a great example of that is we had a USAID program that went to California, which cost a whole lot more money had it been done somewhere else. And the head of USAID was actually threatened with his job because of his complaint about that earmark. So there is not only behind-the-scenes coercion, there is also threats that are made in public.

Senator MCCAIN. And I would like to bring up another unpleasant episode, Mr. Chairman. Somehow one Member of Congress, an appropriator, with a crooked lobbyist, all by themselves, were able to channel hundreds of millions of dollars to one "defense contractor" for the most nebulous and wasteful and criminal projects. And obviously, I am referring to former Congressman Cunningham.

Is the system so broken, is there so little oversight, Mr. Chairman, that one member and one lobbyist can divert hundreds of millions of dollars of taxpayers' dollars that are supposed to be for the men and women in the military to a corrupt enterprise?

I think everybody was so alarmed at what Congressman Cunningham did. I think we should be alarmed that he was able to.

Senator COBURN. Yes. So we discussed before you arrived the lack of oversight and the oversight responsibility of Congress and that part and parcel of the earmark process is lack of that oversight.

Well, I want to thank both of you. We appreciate you coming. And Senator McCain and Congressman Flake, thank you so much for your service to the country.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator COBURN. Our next panel has Steve Ellis, vice president for programs for Taxpayers for Common Sense; Tom Schatz, president of the Council for Citizens Against Government Waste; and Scott Lilly, senior fellow at the Center for American Progress and somebody who has extensive experience inside the appropriation process.

I want to welcome each of you. Your entire testimony will be made a part of the record, and you are each recognized for 5 minutes.

Mr. Schatz.

TESTIMONY OF THOMAS A. SCHATZ,¹ PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE

Mr. SCHATZ. Thank you very much, Mr. Chairman.

And as I mentioned to you very briefly earlier, we have been waiting 16 years for someone to come up with a proposal and a serious one to reform the earmark process.

Senator COBURN. Let me interrupt you for a minute.

Mr. SCHATZ. Yes.

Senator COBURN. You can see how important this hearing is to the rest of the Members of the Senate.

Mr. SCHATZ. I was going to mention that.

Senator COBURN. There is no one else here. There is no one else in attendance because this is not deemed to be a problem.

Mr. SCHATZ. I think they are also probably off trying to figure out what earmarks they want to add into these bills, given certainly what Congressman Flake mentioned, that this is a deadline in the House, and the appropriations process is moving forward in the Senate.

And that is one of the points that we have made in our testimony, that this is not a large amount of dollars, although \$64 billion is. And our definition of pork barrel spending, which we have been using since 1991, which was developed in conjunction with the Congressional Porkbusters Coalition, is a little bit more narrow than the overall earmark number. But whatever you want to call it, it is a problem. There is no question about it.

And the witnesses prior to this have described it well, as have you. And being aware of that, I think the question is what do we do about it?

I think there will be some very public repercussions if nothing is done because this process has been and is really symbolic of the

¹The prepared statement of Mr. Schatz appears in the Appendix on page 43.

larger problems here in the U.S. Congress. These are low-priority projects that take up a lot of time, leaving little time and effort and oversight to see what we have done with our money and also to look at these larger problems, like Social Security and Medicare.

So the very least that we should be doing is what is contained in S. 1495, the Obligation of Funds Transparency Act, which tells the agencies you can spend money only if it is the committee report.

And to address one of your questions, when did this start? In 1988, the Office of Management and Budget issued a report identifying unauthorized projects in the appropriations bills. That was the first and last time they ever did that because the following year, the Appropriations Committee started talking about, as the Senator and the Congressman mentioned, cutting off certain funds to OMB.

We, in turn, took that idea and turned it into the first Congressional Pig Book in 1991, and we have been issuing them ever since. And we have identified more than 66,000 projects, costing \$212 billion over that period of time.

And as the government has grown, so has the number of earmarks and the pork and the waste, which points to, obviously, the need to reduce the size and scope of government, and it would certainly help to start with these low-priority projects.

Taxpayers have probably heard about the \$50 million indoor rainforest. They may not have heard about \$3 million provided to the First Tee Program in Florida or \$273,000 to combat Goth culture in Blue Springs, Missouri, which turned out to be such a ridiculous project that they returned \$132,000, saying maybe this isn't such a big deal.

But originally, they claimed that these kids were running around town, and they were going to blow up the school like they had done at Columbine, and we needed to do something about it. And Congressman Graves apparently believed this and added this money in. And then it was given back.

But since the vast majority of projects are added in committee reports and in conference reports, that is really where the focus of any legislation should be. We have seen some proposals to allow points of order to be presented against items added in conference reports. That is certainly helpful.

But I think there needs to be a very comprehensive look because, as both of your first witnesses said—Congressman Flake and Senator McCain—this is our chance. These scandals have brought forth the interest, at least with the public, if not your colleagues here today, on this issue to an extent that it has never been done before.

We have been issuing the Congressional Pig Book—and Senator McCain and Congressman Flake have come along, and we hope you will join us as well this year—and we get a few days of publicity and some conversation and some possible reforms. But the result of what has happened, where the digitization of DOD manuals can turn into a bribe has really indicated things have gone too far.

So we have been talking about this for a long time, and people say, well, is it really that big a deal? It is because of what it sym-

bolizes and what it has become over the period of time and also, of course, the explosion in this type of spending.

In fact, we really refer to the whole process as a form of legalized bribery, where we have taken this money from the taxpayers, kind of washes through the Appropriations Committee. As Congressman Flake pointed out, when you have the lobbyists filling out these forms and handing them back to the members just as if it is going to happen, nobody is thinking about the fact that this is the taxpayers' money.

I don't think anyone who was asked to individually contribute their share for that \$50 million indoor rainforest in Iowa would be very happy about it. But when they hear members go back home and talk about these projects, it sounds like it is the most wonderful thing in the world.

And in terms of the priorities of the agencies, the National Park Service has a \$9 billion maintenance backlog. And one of the things we will put into our Congressional Pig Book this year is the information that the National Park Service has a program called "Save America's Treasures." They asked for \$15 million, a competitive program. They got the \$15 million.

The appropriators added \$16.2 million above that and earmarked every single dollar. So they thought the program was important enough to more than double the amount of money, but they started making those decisions.

So that is just one small example of what is wrong with what has been going on. And we really appreciate your leadership on this issue, and we will be ready to help you get this legislation moving forward.

Senator COBURN. Mr. Ellis.

**TESTIMONY OF STEVE ELLIS,¹ VICE PRESIDENT OF
PROGRAMS, TAXPAYERS FOR COMMON SENSE ACTION**

Mr. ELLIS. Thank you very much, Mr. Chairman.

Good morning, and I am Steve Ellis, Vice President of Programs at Taxpayers for Common Sense Action, a national nonpartisan budget watchdog.

And you know, I noticed when you mentioned that the Senate hasn't recognized they have a problem. As anybody who has done any 12-step program recognizes, that is the first step towards curing your addiction to spending is to recognize that you have a problem.

I think some of the efforts that we have seen today or at least some of the comments from leadership has been that there is a political problem rather than actually a substantive problem. Taxpayers for Common Sense Action definitely believes there is a problem and strongly believes in making earmarks and the legislative process, particularly the appropriations process, fully transparent and more accountable.

By denying funding for pork provisions that are not in the actual law, S. 1495, the Obligations of Funds Transparency Act, helps force the earmarks out of the shadows and into the light of public debate.

¹The prepared statement of Mr. Ellis appears in the Appendix on page 51.

As everyone on this panel is painfully aware, and you, Mr. Chairman, and the previous panel, earmarking has exploded in recent years. But as noted, at least a bit by Mr. Schatz, is that earmarks, to me anyway, I guess, are a little like pornography.

Maybe in more ways than one, but more going off of the late Supreme Court jurist's Potter Stewart's observation that he couldn't define pornography, but that he knew it when he saw it. Well, earmarks are hard to define, but we all know it when we see it.

As your chart showed, in constant 2005 dollars, the CRS found 4,126 earmarks in fiscal year 1994 worth \$29.6 billion. That increased by fiscal year 2005 to 15,877 earmarks worth \$47.4 billion. That represents a 285 percent increase in the number of earmarks since fiscal year 1994 and a 60 percent increase in the cost of those earmarks.

TCS's own analysis of the earmarks in fiscal year 2005 found 15,584 earmarks worth \$32.7 billion. In the fiscal year 2006 defense appropriations bill, TCS found 2,837 earmarks worth \$11.2 billion. That is up from 62 earmarks worth \$8.9 billion in 1980 and a dozen earmarks worth \$5.6 billion in the 1970 defense appropriations bill.

The average 1970 earmark was worth \$466 million compared to the average 2006 earmark at \$3.9 million. You could argue that those dozen half billion dollar 1970 earmarks may have represented the legitimate policy differences between the Legislative and Executive Branches. But it is clear that at \$3.9 million, the 2006 earmarks were an effort to steer defense dollars back home for pork barrel spending and political favors.

Last year's highway bill had a record \$24 billion in earmarks, including the infamous "bridges to nowhere," which were part of a billion dollars obtained for Alaska by Transportation Infrastructure Committee Chairman Don Young.

When Congress finally passed the Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) bill, what was supposed to be a fix for a \$5 billion trade distorting subsidy became a \$140 billion Frankenstein's monster larded up with tax provisions to benefit bow and arrow manufacturers, professional sports teams owners, fish and tackle box manufacturers, and shopping mall developers.

The U.S. Army Corps of Engineers, their budget is built project by project. So it is virtually all earmarks. The President zeroed out 532 of the fiscal year 2006 earmarked projects in his latest budget. The Army inspector general remarked that for the Corps, "The budget process was deemed a first half irrelevancy. The measure of effectiveness was the amount of funds actually appropriated by Congress."

The American Association for the Advancement of Science had noted recently that, "Although earmarked funding has been increased steadily over the past several decades, by all accounts, the dramatic explosions in R&D earmarks in 2005 and 2006 coincide with the flattening and even declining R&D budgets," meaning that earmarks cut into competitive programs instead of adding to them. In fiscal year 2005, there were \$1.5 billion in R&D earmarks. By fiscal year 2006, \$2.4 billion.

Simply limiting the number of earmarks is not going to work. The first step is to make the budgeting process transparent. Every

earmark request should be made public in real time. Additionally, each successful earmark should be accompanied by amplifying information and the name of the requesting Members of Congress.

Next, earmarks can be defined as legislative provisions that specify certain discrete projects or entities to receive Federal funding. These provisions could appear in appropriations, authorizations, and revenue bills. Additionally—and this differs from S. 1495—all entities should be included—private, non-Federal, and Federal. To leave out Federal entities entirely would leave many earmarks, such as those for defense or for the Corps of Engineers, untouched.

Finally, there has to be some teeth. S. 1495 has teeth. If it is not in the bill, it doesn't get funded. But just because an earmark is in the law, it isn't necessarily worthwhile, which is some of what Representative Flake was mentioning.

We also need to have effective tools to highlight and remove egregious earmarks. The consequences of earmarking are clear. Duke Cunningham's schemes to profit off the backs of taxpayers counted on earmarks. Jack Abramoff called appropriations bills "favor factories," as you mentioned.

Earmarks are the direct result of a corrupt process that encourages lawmakers to scrutinize and fight over the minutiae, to spend their time not legislating and conducting oversight, but pulling money into million dollar chunks back to their home districts.

Taxpayers for Common Sense Action stands ready to work with you and others to enact real reform. S. 1495 could be a hammer in our toolbox working to build a responsible Federal budget.

Thank you very much for inviting me to testify today.

Senator COBURN. Thank you, Mr. Ellis.

Mr. Lilly, I want to thank you especially for being here. Your knowledge, institutional knowledge and background is very important to this debate.

Thank you.

TESTIMONY OF SCOTT LILLY,¹ SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS

Mr. LILLY. Thank you. The idea that a legislature should control purse strings really goes back to 1215, when the British nobility told King John that if he was going to spend money, they were going to be in on the decisionmaking.

When the Founding Fathers met in Philadelphia to put the Constitution together, they spent months over the structure of the government. But one provision, probably the most profound provision in the document with respect to the model of government we had, was adopted without any debate at all.

That is Article 1, Section 9, Clause 7, which Representative Flake mentioned earlier. "No money shall be drawn from the Treasury, but in consequence of appropriation made by law."

There was virtually universal support among the Founding Fathers for a Congress that had really dominant power over spending. But what this hearing is about, and I think this a very impor-

¹The prepared statement of Mr. Lilly appears in the Appendix on page 57.

tant hearing, is what do we do when Congress uses that power foolishly?

Earmarking is essentially the practice of taking discretion that is normally exercised by program administrators and directing it through the legislative process. That is done in many instances for good and sufficient policy reasons, and that is what makes this argument so difficult.

But in more recent years, the amount of earmarking, as these charts show, has virtually exploded, and the motivation behind the earmarks, the nature of the earmarks has become more parochial and more political, rather than based on legitimate policy differences between the two branches of government.

I think that the perception that this practice has a major impact on public expenditures or the debt is probably wrong. I think there is some impact, but I don't think that is why we should be opposed to it.

I think the idea that most earmarks—and I think you mentioned this in your opening statement—are ridiculous and wasteful is also wrong. Most members work very hard, most Senators work very hard at picking the things that they think will benefit their communities the most.

But I do think the practice is out of control, and I think it is diminishing the integrity and the effectiveness of the Congress and the entire Federal Government.

Earmarks are distributed in a highly unfair manner, and I mentioned in my written testimony that Bakersfield, California, got over \$700 million in transportation earmarks, far more than nearby Los Angeles, which clearly has far greater transportation difficulties.

While most earmarks are reasonably good, in my opinion, the ones that are bad are really bad, and some of my favorite candidates for the "earmark hall of shame" have been mentioned by the other witnesses this morning.

More troubling to me is something else that has been mentioned, and that is that earmarks are corrupting the legislative process. People are being divided from their constituents by offers or threats regarding earmarks and often on unrelated policy questions. Not just more or less spending—and I would say there are also instances where earmarks are used to persuade members to vote for less spending than they would otherwise—but also on tax policy and trade policy, on a wide range of other things.

And I think while conservatives and liberals may disagree on what the policy ought to be, there is room for both sides to agree that they ought to be made based on the conscience of the member and his relationship with his constituents, not on what the leadership offers in terms of earmarks.

But the worst thing about earmarks, in my opinion, is that they have eaten the legislative process. People are so consumed by the practice, and the more earmarks you have, the more communities, the more foundations you have coming to Washington asking for earmarks. And the more time that staff and senators and Members of Congress have to spend talking to people about these, the more time they spend with the committee staff, and the more time the

staff that should be doing oversight is wrapped up and dealing with this burden of earmarks.

As I mentioned in my written testimony, one subcommittee got nearly 15,000 requests for earmarks, which would, if you put each request on a single page, be a 10-foot high stack of paper. So just the work that it takes to handle that is enormous.

I think that we have an opportunity to do something now that we haven't had in a long time, and I think this hearing is a step in the right direction. I would say I am much less sanguine about the legislation that is being promoted. I know it is well intended. One provision in the legislation, which requires separate votes on conference reports on ungermane amendments, I think is good, but it doesn't get at the problem of earmarks.

I would ask why, when one of the major issues that we are raising here about earmarks, we don't do anything about the earmark in the highway bill, which this legislation does not do. It does not do anything about the earmarks that are showing up in mandatory spending bills or in tax bills, all of which should be included in any sensible approach to this.

Furthermore, I think the Appropriations Committee can walk right away from this language because it is not difficult to put these things in bill language. It is not difficult to put them in bill language in a conference report. So they can be put into the bill, brought back to the floor, and you have no more choice than you do now.

I would also point out that any appropriation bill that is reported out, which has earmarks in the report, that report is available to members on both sides of the Capitol at the time that the bill is reported. The earmarks that are in there are there, and any member can reduce the account which is earmarked by the amount that he wishes based on the quality of the earmarks that are in there.

If he finds five offending earmarks, he can offer an amendment to strike the amount that those earmarks would take out of that account on the floor, and it would be, I think——

Senator COBURN. But not on a conference report?

Mr. LILLY. On a conference report, you have got a big problem. I don't know how you get around that problem, but you don't solve it with this bill because you can put the bill earmarks into the bill language of the conference report.

Senator COBURN. Well, let me stop you there for a minute and ask some questions. First of all, here is the theoretical problem, which becomes a very practical problem, when they come out of conference. The report language is printed. At the same time the bill is put on the floor, it goes online, but the report language is 280 pages long, and you are going to move the bill today.

So no staff, outside of appropriations staff, ever gets a chance to judiciously study what is in the report language. And as you said, they are very crafty writers. We had report language this last year in the defense appropriation bill on FMAP for Alaska that never mentioned Alaska once.

But to the benefit of Alaska, but to the detriment of 13 other States, Alaska got \$120 million more for their FMAP program, when other States were suffering just as well. And Alaska was

never mentioned. It wasn't even discovered in terms of the crafty writing. So the point is, time is of the essence on report language.

I want to ask you a couple of other things.

Mr. LILLY. Could I respond to that?

Senator COBURN. Yes, sir.

Mr. LILLY. I worked with several members on the House side who have introduced legislation that has over, I think, 120 co-sponsors now. And one of the provisions in that legislation is that conference reports, as well as bills, have to lay over, and printed copies have to be available for 2 days before a vote can be taken on it, and that can be waived only by unanimous consent, every single member. Even a two-thirds vote would not accelerate that.

Senator COBURN. That is in some of the legislation that is coming through the Senate as well.

Mr. LILLY. And I think that is the only protection that you have.

Now the provision that is in this bill which blocks non-germane legislation from going in, and I think it would do a great deal of good, for instance, with the drug liability language that was airdropped into the defense appropriation bill. What that would do would be to go back to what we did for over 100 years in the House and Senate, and that is there is a prohibition against House conferees adopting legislative language in a conference report.

And so, the way they get the conference back is to bring it back in technical disagreement, and then the rules require a separate vote on each such provision. And we used to do that all the time. That basically stopped in 1998, and I think that is a terrible blow to the process, and not good for the Appropriations Committee or the authorizing committees to let that happen. And the Flake bill would correct that.

Whether there is some mechanism by which you could have separate votes on earmarks that show up in a conference, I am not sure. That is uncharted territory. But the best thing would be to reduce the number and volume of them.

Senator COBURN. Right. One other question. I took you right, but my staff didn't take you right. I recognize that most earmarks have value, but they are just not in the priority for what our Nation is when we are spending \$630 billion more than we take in every year.

Mr. LILLY. Well, I think we earmark—I don't agree with the CRS numbers or some of the others. But I would say truly district-oriented earmarking is probably 2 percent of discretionary spending. The problem is that we are so focused on that 2 percent that we almost have a deal with the White House that they control the other 98 percent. That is what the real problem with this is, and—

Senator COBURN. Well, the other problem is, is if you ask for an earmark, and then the bill comes out that is horrendous in terms of its spending and you don't vote for it, not only does that earmark come out, you don't get one the next cycle.

So, in fact, it is a corrupt process, whereby members are forced to vote for things they would never vote for because of one small parochial interest that is in the political best interest in the short term of that Member of Congress, but is in the politically disinterested of this country and its future.

And that is what is so undeniably wrong with this process is the process is used to grow the government in a way that is not in the best interest of the country over the long term. That is the problem with it.

Mr. LILLY. I agree.

Senator COBURN. If we were in surplus, I wouldn't have any problem with that. I would love to compete with a lot of the bureaucrats rather than have oversight. But we are not in surplus. What we are is stealing every day the future from our kids.

One other statement you made, and then I will let our other panel members comment. You said there were earmarks that sometimes are used for less spending. Could you give me an example of an earmark that is placed in a bill that would incentivize less spending?

I have never seen one. I served in the House for 6 years, and I have been here a year and a half, and I have never seen one.

Mr. LILLY. We had a funny situation on the Labor HS bill in the House last November. That bill came back. Senator Specter said that there is so little in for top priority programs we can't afford to do earmarks.

Came back to the House a bill that was probably a good deal better than the one that left the House comfortably. Came back and was defeated on the House floor. And I think there was widespread speculation that people would not have voted for it without earmarks, but they would if they had earmarks.

And the intention this year is to put earmarks in it because they know it is going to be a really bad bill and the only way they can get the votes to cut Head Start, to cut a lot of these programs is to give members something on the side.

Senator COBURN. The 302(b) numbers on Labor/HHS has declined in the House this year?

Mr. LILLY. Yes. It will be lower.

Senator COBURN. They have a lower number than last year after the 1.5 percent?

Mr. LILLY. Well, the budget resolution hasn't been passed, but—

Senator COBURN. Well, it doesn't matter what that is because the appropriators determine the separate 302(b) numbers anyhow.

Mr. LILLY. Well, they can't do the 302 until they get the budget number, but I think the expectation is that there are going to be cuts across the board. If they stay within the President's budget, which I think they will, then—

Senator COBURN. I think it is interesting for the public, the public doesn't realize that when a budget is passed and you have a total discretionary spending number, that the process under which that goes is really a rather fluid process, is it not, in terms of appropriations?

In other words, you can kind of play the game with the numbers to move, depending on which bill you move first and which one you want to get out there and how you leverage that in terms of getting the votes to pass bills?

Mr. LILLY. Well, the big game that was played last year was in the defense side, and this two-step process we have now where we fund the government in one set of bills and then the Iraq war in

another creates a lot of opportunity for mischief. And both sides took money out of defense, knowing that they would replace that money in the supplemental.

One reason we have a \$92 billion supplemental was that money was taken out of defense in the 2006 bills. So, yes, there is a lot of movement that goes on.

Senator COBURN. Mr. Schatz, Mr. Ellis, any comments?

Mr. SCHATZ. Well, I think Mr. Lilly has made some very good points about how it all works, and I think it is instructive for people to understand that there are a lot of games played here that would get people in trouble.

The Enron trial is going on right now, and I wonder how many Members of Congress would be in that same type of situation for the kinds of accounting gimmicks that we use here in Washington. We seem to add days to fiscal years to move money from one place to another. I recall one of your colleagues once tried to make Lake Champlain the sixth Great Lake in order to get certain funds.

So it takes a lot of work to watch how these funds are being spent. The more exposure, the more opportunity to eliminate these projects, the better off we are. And certainly, the member-directed local projects are the ones that really have the least merit or have less merit than others.

Some members talk about wanting to have this discretion. They would like to be able to direct funds back home. Why have grant programs? If you don't like the way money is being distributed, change the formula. Don't go around and say, well, we would like to add \$16 million to the Save America's Treasures Program at the National Park Service, go to your local theater or museum or whatever it might be and ask them to apply and compete with the rest of the world.

Senator COBURN. You raise a great point. The other problem with earmarks, which nobody ever talks about, is when something is earmarked, the normal process of oversight and evaluation of that money doesn't take place, most generally.

So if money goes through a grant process, there is an IG that looks at it. There is an evaluation of the grant process, in other words, internally. When it is earmarked, there is no oversight.

And I will give you a great example. A million dollars, or \$500,000 went to a small school system in Oklahoma for computers. They ended up paying \$1,000 a month for this small school system just for maintenance on the computers. They have nothing, essentially nothing left in terms of computers or maintenance, and the money is gone. And there is no accountability except through the grant process.

Now the grant process is going to come back and look at how that money was spent. And of course, the appropriate things were done. Had I earmarked that money and the same thing happened, there would have been no oversight on it. So that is the other thing that the American public doesn't understand is that when something is earmarked, very rarely does it ever get looked at again in terms of how the money is spent.

Mr. SCHATZ. If I could add one example, and it is in my statement, and I will try to summarize. The First Tee Program, St. Augustine, Florida, which is a nonprofit organization created to teach

young people how to play golf, a few years ago got \$1 million for a character education program. And certainly any sport can teach you character if it is done the right way.

And there is, in fact, a character education program at the Department of Education, and you and I might agree it is probably not something we should do anyway, but it is there. All the money goes to State and local education agencies. The largest amount is about \$500,000. They apply. They are evaluated. They may or may not get the money the following year, but there is a group of people that are watching how the money is being spent.

Since the First Tee Program would never qualify—and by the way, this is an organization that is supported by the PGA, the LPGA, major manufacturers of golf equipment—they even run ads on the major golf tournaments. So they have got plenty of money if they wanted to save a million dollars for character education, they could get it somewhere else.

There is no way to evaluate how that program is working at that entity because it doesn't qualify. So that is just one example of, I am sure, many that we have identified over our 66,000 projects since 1991 that simply subvert the whole process of spending money.

Senator COBURN. Thank you. Mr. Ellis.

Mr. ELLIS. Yes, sir. I think that one of the things that you have hit on and I think is incredibly important that is going on here is that how much time actually that the earmarking process absorbs. I mean, it takes away from the oversight function, but it also just absorbs a tremendous amount of staff time and members' time.

And I have here this is just one member's earmark requests from last fiscal year that they had submitted to the House. And you figure this times—this is only a sophomore member. So I imagine as you get a little more senior you would have even more. But this times 535 requests, you have a huge stack of earmark requests that end up going to the Appropriations Committee. The Appropriations Committee goes through all of that. Not every single one gets funded. They make decisions on that. There are replies back. The staff obviously had to develop all of this.

I mean, there is a huge amount of energy that is directed toward what is admittedly a small part of the Federal budget, but it means that we are not spending nearly as much energy on the rest of the Federal budget and dealing with all of those other issues. And to some extent, I firmly believe that the growth in earmarks is almost because it is a "keep up with the Joneses" type of thing. It is that they do it because they can.

A couple of years ago when we had an omnibus, we did a listing of a wide variety of earmarks across the country. One of the earmarks that we listed was A-Plus for Abstinence, a group in Pennsylvania—laudable group, you know? And we just put together the whole listing. As you said, some of these earmarks are for otherwise laudable programs.

And the executive director called me to complain that they were on this list. But her complaint was not so much that we had listed them, but she had never even asked for an earmark. She had never even asked for this money. A Member of Congress had visited her

program and had thought that this was a good program and just added it there.

She wasn't sure if she wanted to take the money because she didn't know if she wanted the Federal Government involved in her program. And so, it is just a case of where the member is just trying to shovel the cash out because they can.

Senator COBURN. Well, we have a vote on, and I have got about 8 minutes left on it.

I want to say, first, thank you for coming. Thank you for the work. Mr. Lilly, I am tremendously appreciative of you participating in this panel.

I have asked my staff to try to make an appointment with you, Mr. Lilly. I have met with these guys before, but I have never sat down—and your experience is something that I would like to just kind of spend some more time asking you questions and learning some of what you know to try to address this issue.

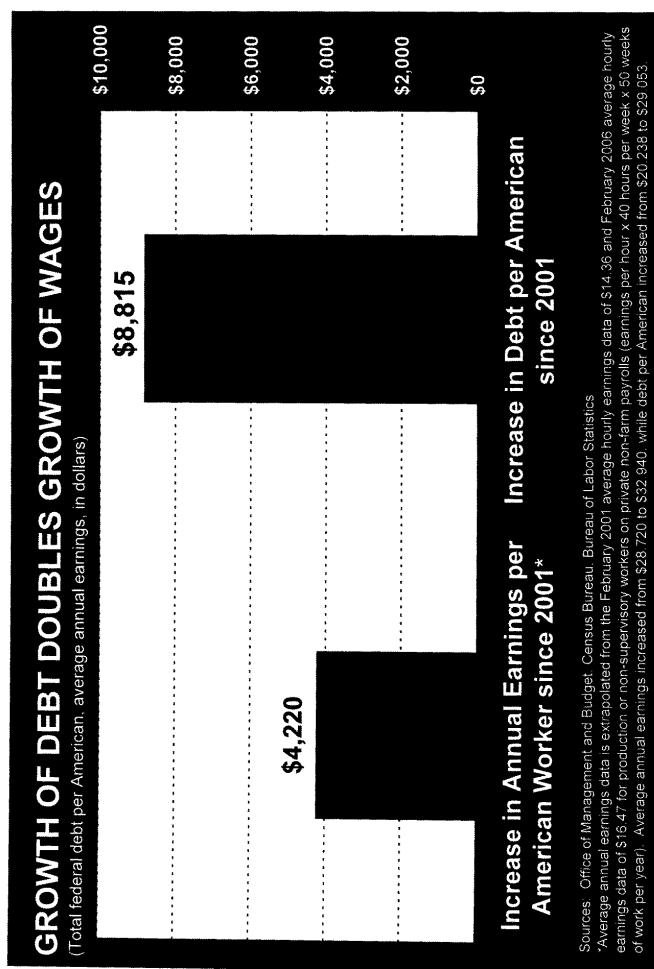
Mr. LILLY. I would be glad to.

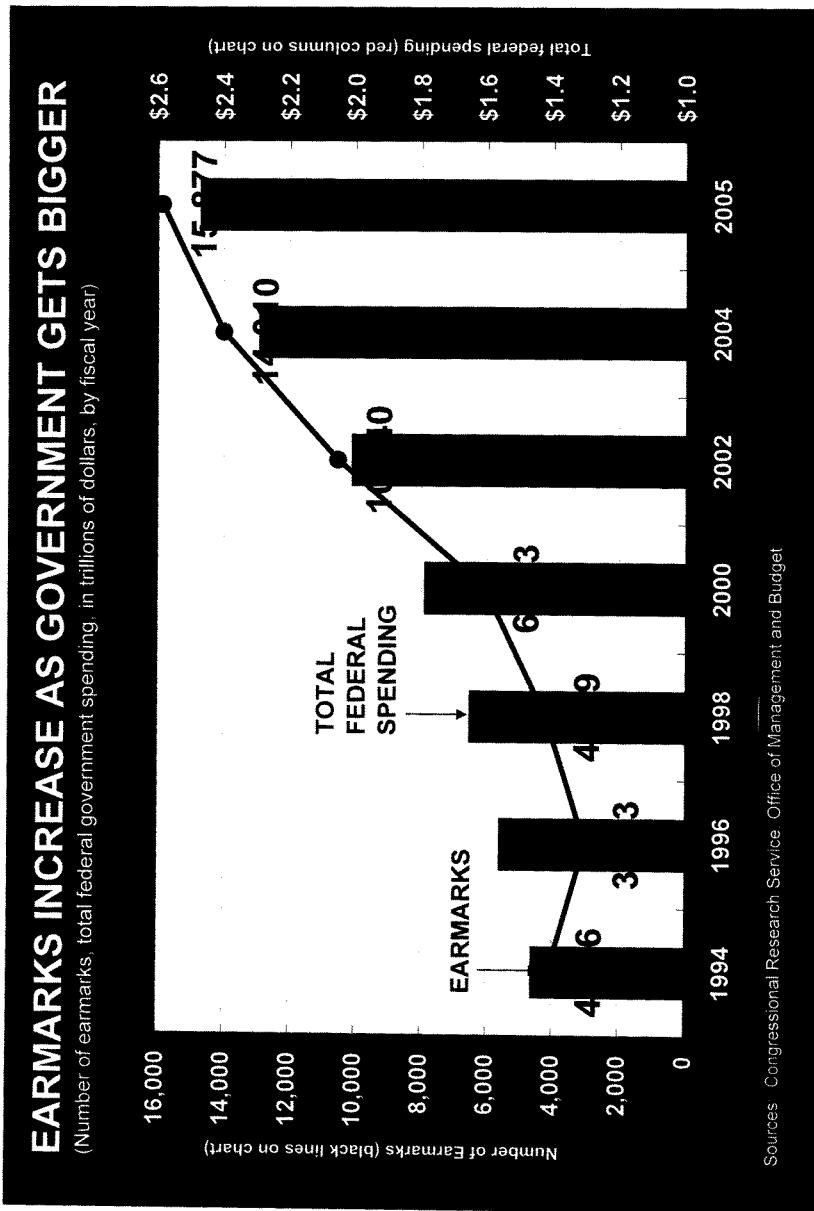
Senator COBURN. I thank each of you for attending.

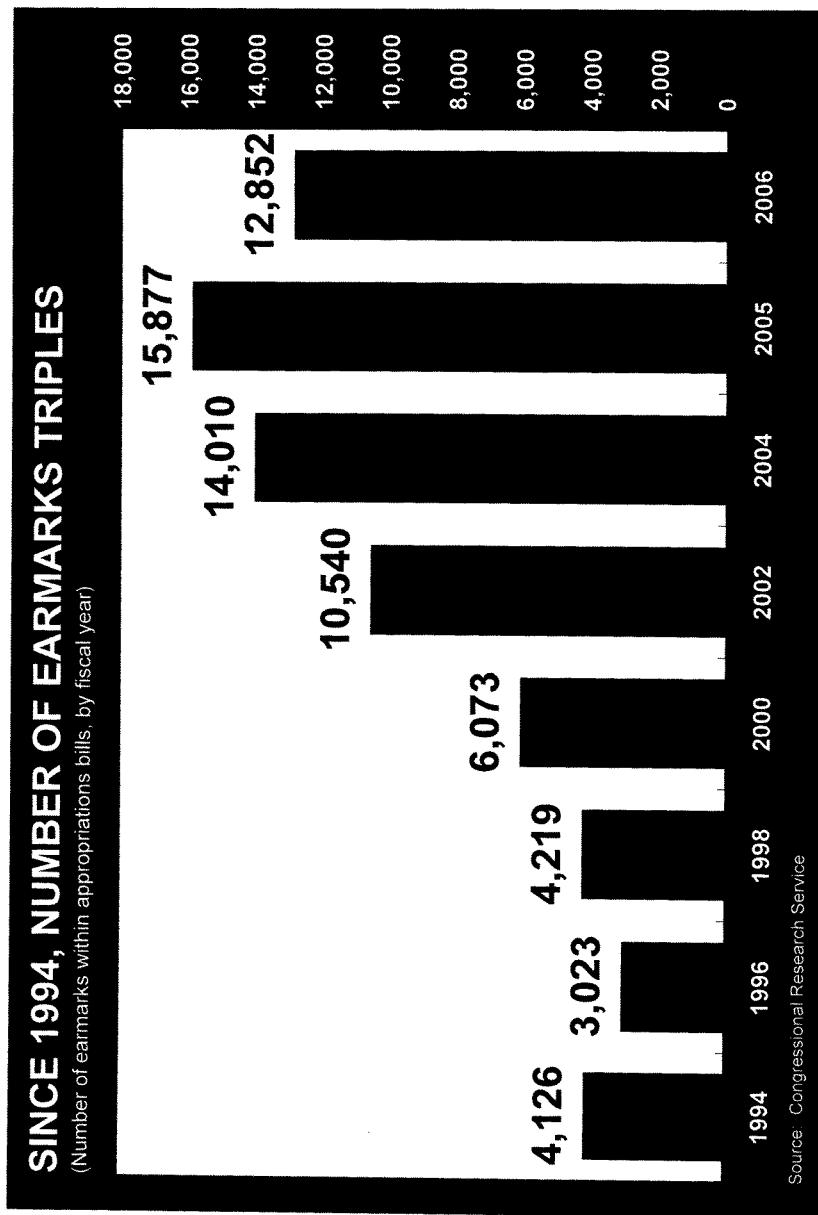
The hearing is adjourned.

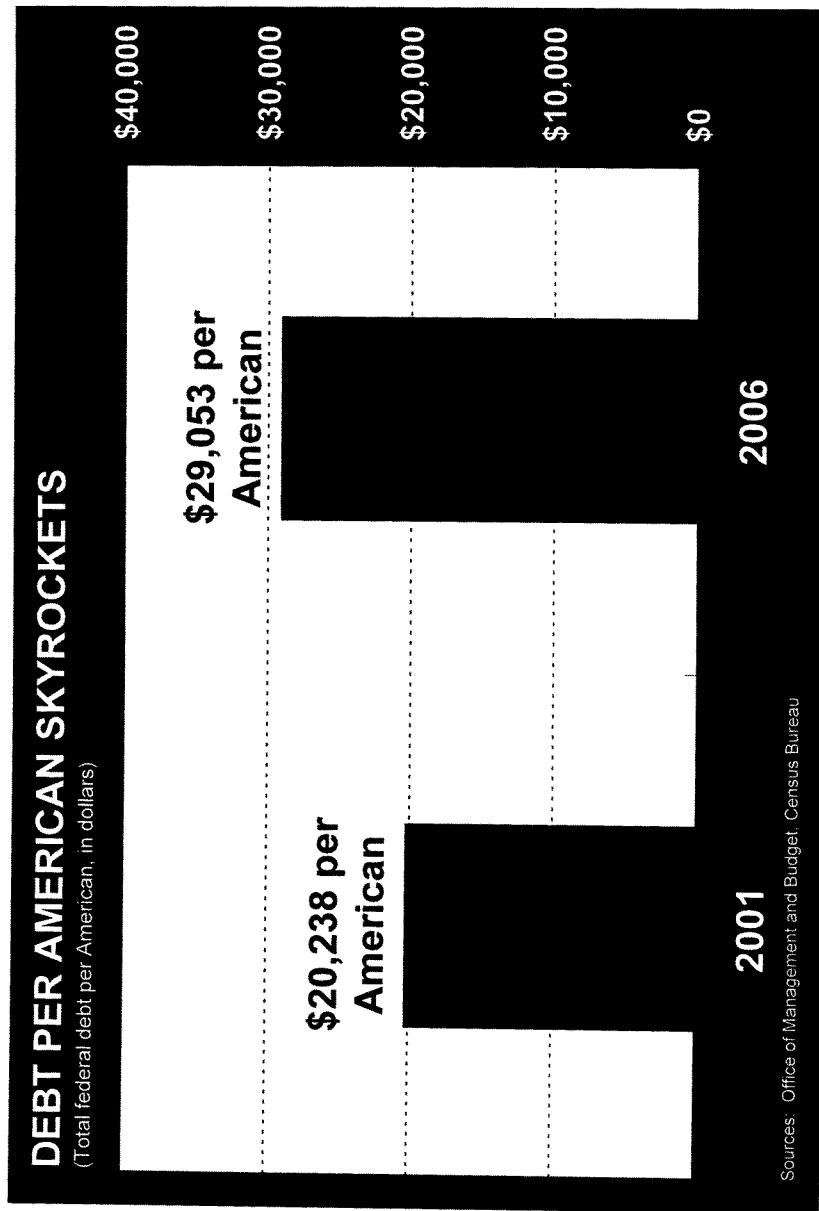
[Whereupon, at 10:47 a.m., the Subcommittee was adjourned.]

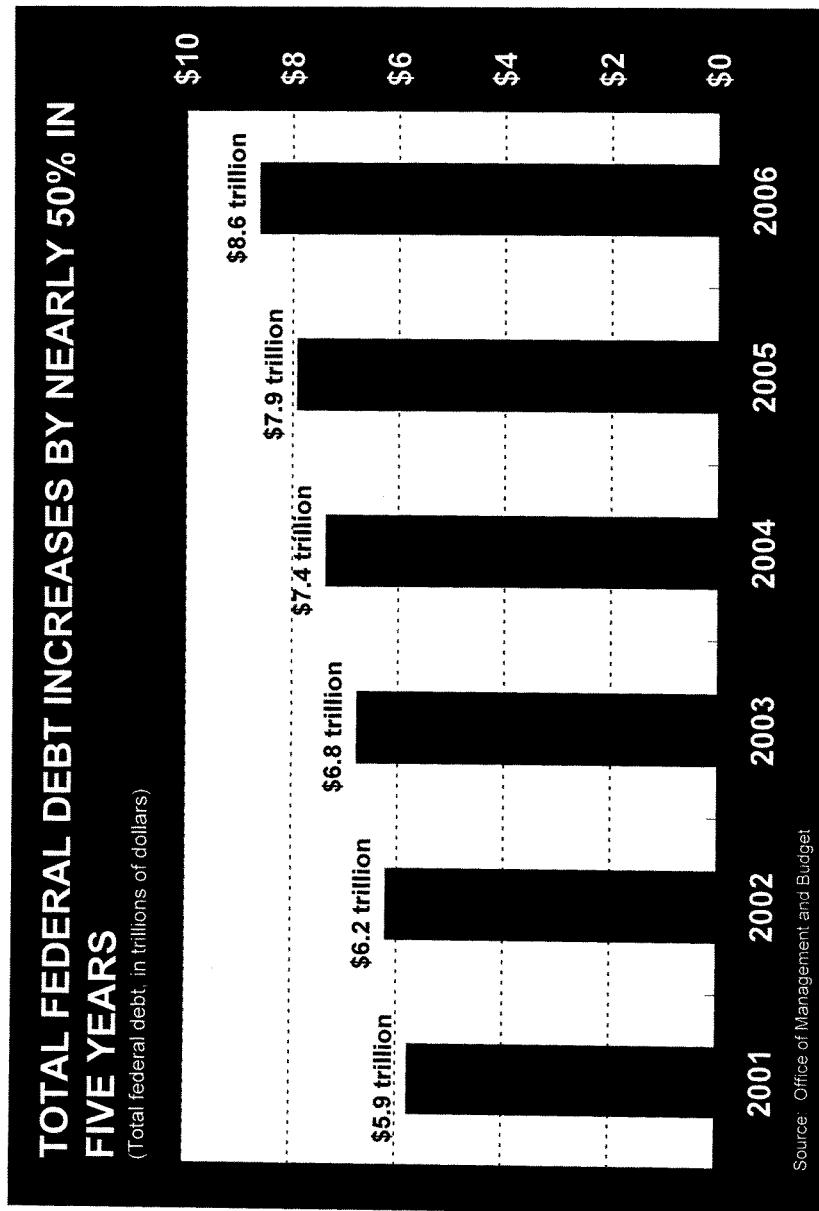
A P P E N D I X

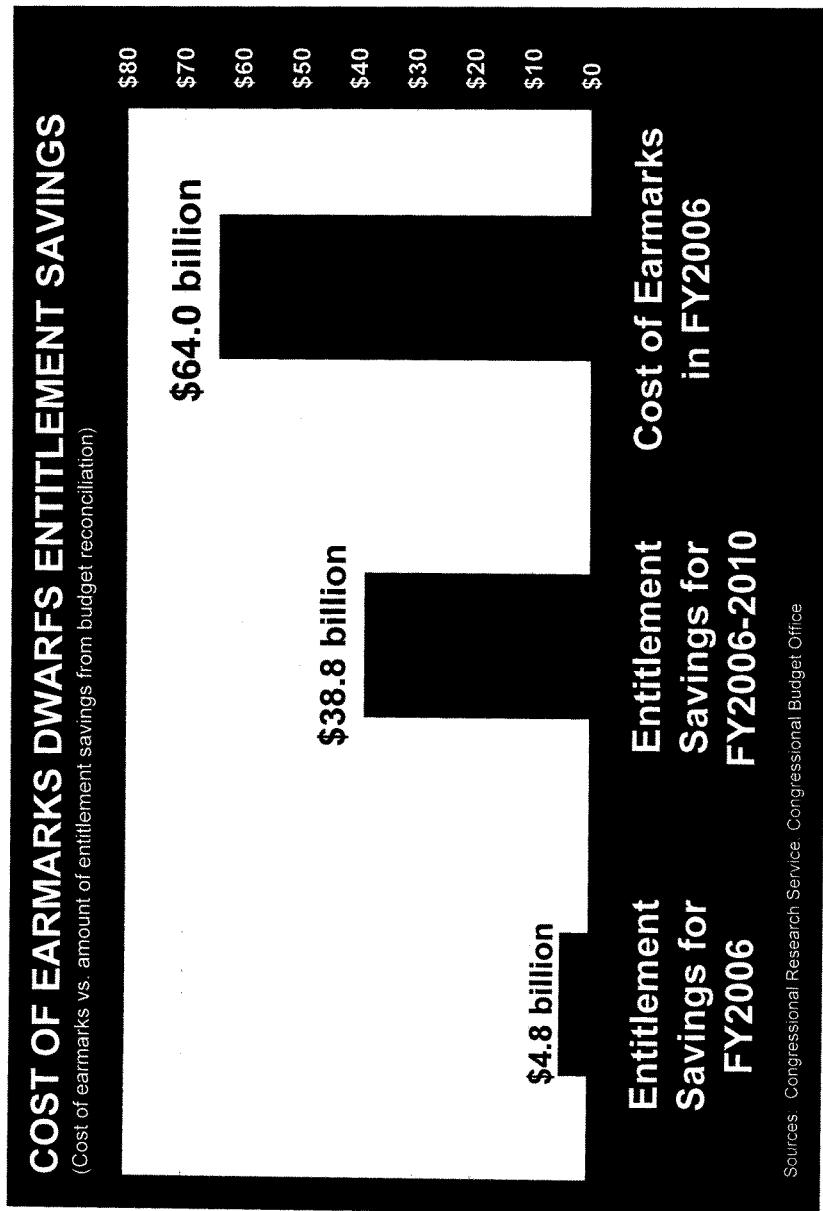


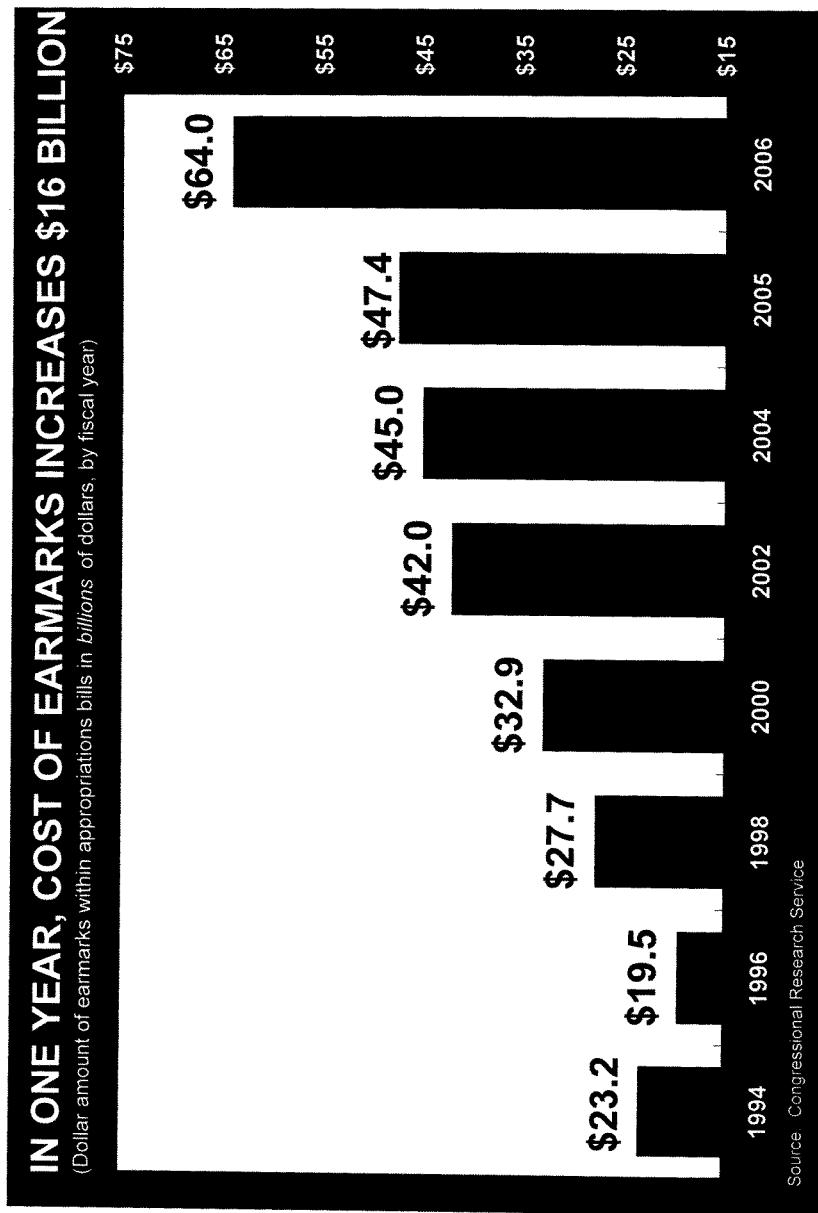


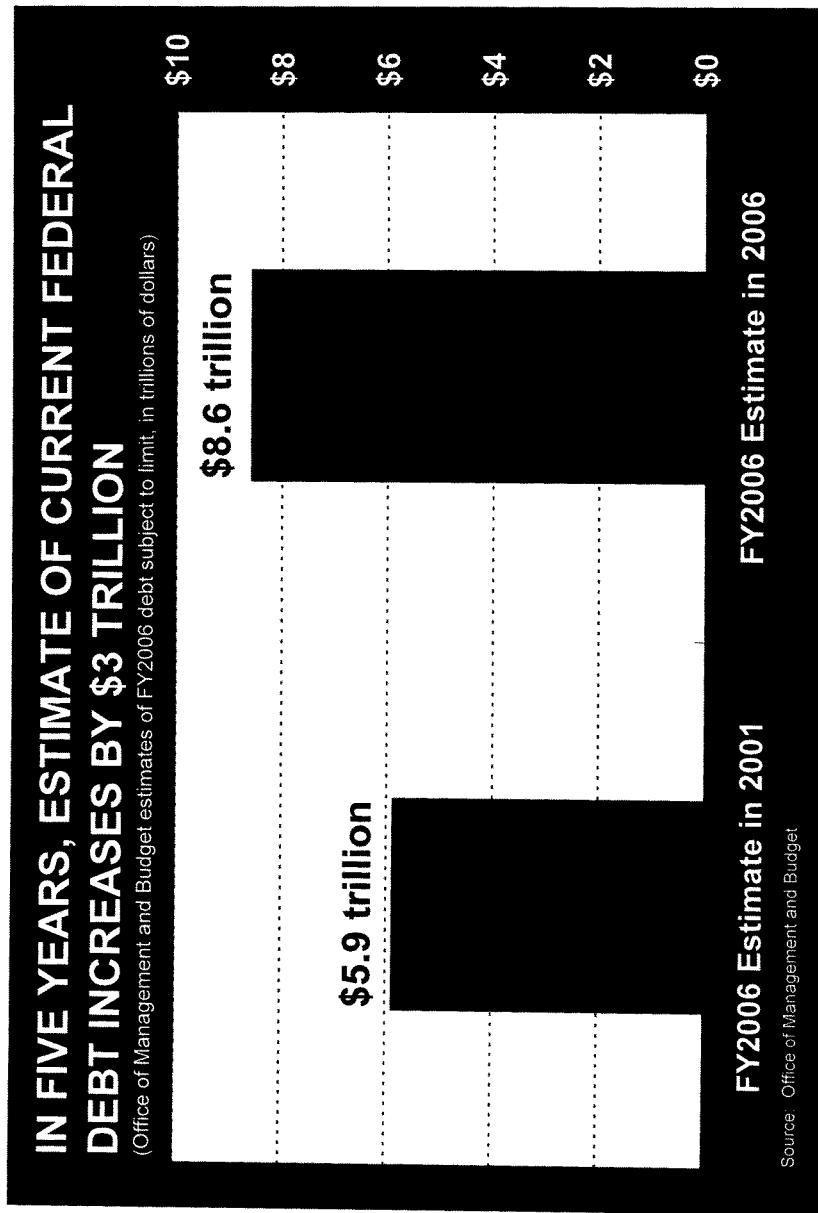


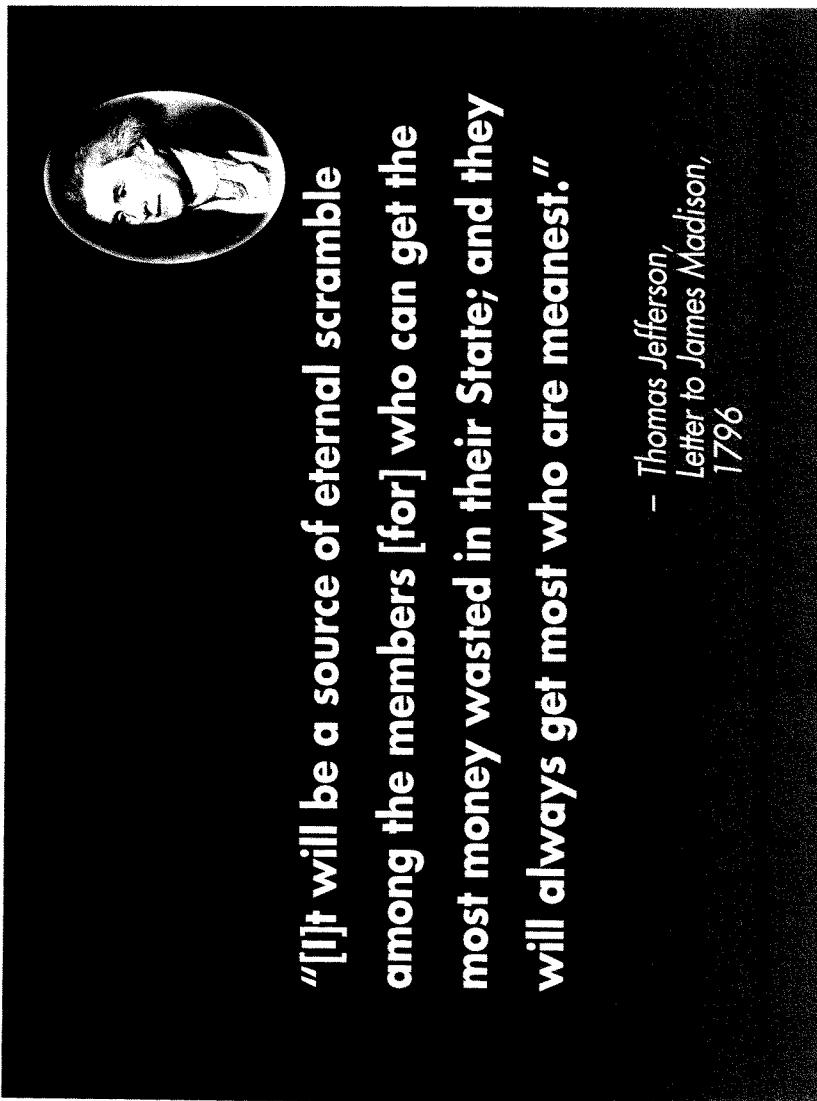












"[I]t will be a source of eternal scramble among the members [for] who can get the most money wasted in their State; and they will always get most who are meanest."

– Thomas Jefferson,
Letter to James Madison,
1796

for new

[Home](#) [About Us](#) [Practices](#) [Biographies](#) [Publications](#) [Press Room](#) [Careers](#)

Appropriation
Congress earmarks
constituents
project
care of
for a
may be
for obtaining
identified appropriations
from a variety of accounts.
We have strong relationships with numerous key members and staff
in both the House and Senate, and a knowledge of precisely how,
Where and when to intervene to achieve desired results.”

“Collectively, our Federal Practice Group possesses an intricate
knowledge of the 13 annual federal funding bills and the methods
for obtaining identified appropriations from a variety of accounts.
We have strong relationships with numerous key members and staff
in both the House and Senate, and a knowledge of precisely how,
Where and when to intervene to achieve desired results.”

“Although success is never guaranteed, the fees that our clients
pay in pursuit of legislative appropriations are almost always
greatly exceeded by the amount of funding they receive.”

We have a track record of success representing a variety of interests in the federal appropriations and policy process. Our lawyers can assist
hospitals
\$334 million
appropriations

**“For fiscal year 2004, the group obtained \$334 million for our
appropriations clients.”**

Our Appropriations Practice is known as one of the most successful in the country.

"Each year our attorneys secure hundreds of millions of dollars in federal funds for a wide range of clients"

President Barack Obama "We have successfully designed and implemented strategies to win federal funds for hundreds of new programs, to keep controversial programs funded, to increase funding for client priority programs, and, when called for, to initiate funding for programs not requested in the Administration budget"

The Appropriations Practice has secured millions of dollars in grants from various trade associations, non-governmental organizations, and foundations to support clients' obtain funding for their policy goals, such as disconnection prevention, energy efficiency, and climate change mitigation.

Our attorney's understanding of congressional budget requests are formulated, we then track and analyze the budget requests as they are submitted to Congress, throughout the various phases of congressional consideration, and finally to agency implementation. Our success is based on our thorough knowledge of each step of the budget process, with a close eye to all budget developments that could impact our clients' interests. We have successfully designed and implemented budget requests that are tailored to our clients' needs, ensuring that they are successful in their implementation.

"Many of our attorneys are veterans of congressional committees staffs or federal offices, and thus know the budget process from both sides, giving them a depth of perspective on the process that greatly benefits our clients"

Almost All Earmarks Hidden in Report Language	
(Percentage of earmarks found within report language in FY2006 appropriations bills)	
Appropriations Bill	Number of Earmarks Hidden in Report Language
Agriculture	99%
Defense	98%
Energy and Water	99%
Foreign Operations	56%
Homeland Security	86%
Interior	99%
Labor/HHS	50%
Legislative Branch	0%
Military Construction/VA	98%
Science/Commerce/Justice	90%
Treasury/Transportation/HUD	96%
TOTAL	96%

Source: Congressional Research Service

The Honorable Jeff Flake
Hearing on H.R. 1642 – The Obligation of Funds
Transparency Act

Senate Committee on Homeland Security and
Governmental Affairs

March 16, 2006

I appreciate this opportunity to testify on behalf of my and Senator McCain's legislation, the Obligation of Funds Transparency Act.

This legislation takes the following steps to rein in wasteful spending, and address what I believe is at the heart of the ethical and lobbying scandals we are faced with today: lack of transparency and accountability in the handling of taxpayer money:

- Our legislation requires that earmarks be included as part of the legislative text of a bill, rather than as part of a conference or committee report.
- H.R. 1642 does not prevent Members of the House and Senate from seeking earmarks. However, it brings much-needed accountability and transparency to the earmarking process.
- By requiring that earmarks be included in the legislative text, Members of Congress would have an opportunity to review the earmarks contained in an appropriations bill before having to vote on it.
- By including earmarks in the legislative text, this bill brings accountability to the earmarking process by allowing Members of Congress to challenge any earmark by offering an amendment to strike it.
- Members of Congress requesting earmarks would be faced with the prospect of having to defend their earmark request on the House and Senate floors. This would reduce the number of egregious earmarks.
- H.R. 1642 would also lessen the power of the House and Senate Leadership and the Appropriations Committee over the earmarking process. This would free up rank-and-file Members to vote their conscience without fear of having their earmarks stripped from appropriations bills.
- In addition, this legislation would curtail earmarks that originate in conference. This bill would require a three-fifths vote of the members of the House in order to consider a conference report that contains new earmarks that neither body has seen.

- It is no secret that earmarks are out of control. In fact, earmarks have skyrocketed under Republican leadership. Since 1994 to 2005, the number of earmarks has gone from just under 2,000 to 14,000.
- This is unprecedented in Congressional history, and a far cry from the goals and ideals of the Contract with America.
- Some have said earmarks are a Constitutional right. Joseph Story, a Supreme Court Justice in the 1800's and renowned Constitutional scholar wrote in *Commentaries on the Constitution* that:

"The true test is, whether the object be of a local character, and local use; or, whether it be of general benefit to the states.

If it be purely local, congress cannot constitutionally appropriate money for the object.

But, if the benefit be general, it matters not, whether in point of locality it be in one state, or several; whether it be of large, or of small extent."

- Congress has the authority, and the duty, to ensure that expenditures of the taxpayer's money promote the general welfare, not solely local welfare.
- Congress should take a look in the mirror and ask itself: does funding an indoor rainforest in Iowa, a cowgirl hall of fame in Texas, a teapot museum in North Carolina, a zoo exhibit in Illinois, or maple research in Vermont benefit the national interest?
- Lobbyists, members, earmarks, and campaign contributions have become inextricably linked. How many more news stories are we likely to see questioning a member of Congress because he or she requested money for a project, and received campaign contributions from the entity that requested the project?
- Congress needs transparency and accountability. Only when we have sunshine in the earmarking process, when the earmarks are in the bill text and cannot originate in conference, can we have transparency.
- Only when any member of the House or Senate can offer an amendment to strike an earmark they believe is wasteful, and the sponsor has to defend the project on its merits, can we have accountability.
- I thank the Chairman and would welcome any questions.

**Testimony of Sen. John McCain on S. 1495, the Obligation of Funds Transparency Act,
before the Subcommittee on Federal Financial Management, Government Information, and
International Security**

March 16, 2006

Mr. Chairman, I want to begin by thanking you, not only for holding this hearing today, but for your tireless work on behalf of the American taxpayer. Your fight to eliminate waste and abuse in the federal government is an honorable one, and I am happy to join you in those efforts. I'm pleased that both you and Sen. Kyl joined me in offering S. 1495, the Obligation of Funds Transparency Act last July. This is a very important piece of legislation, and it is imperative that we work to move it to the Senate floor for a vote. I would also like to acknowledge the hard work of my fellow Arizonan, Rep. Flake, for introducing the companion bill in the House of Representatives - H.R. 1642.

As all of my colleagues know, the process of earmarking funds in the annual appropriations bills has lurched out of control. According to data compiled by the Congressional Research Service (CRS), in 1994, there were 4,126 Congressional earmarks added to the annual appropriations bills. In 2006, there were 12,852 earmarks. The level of funding associated with those earmarks has risen from \$23.2 billion in FY 1994 to over \$64 billion in FY 2006.

To address this growing problem, I was recently joined by my colleagues Senators Feingold, Coburn, Bayh, Sununu, Graham, Ensign, DeMint, Kyl, and Cornyn in introducing S. 2265, the Pork Barrel Reduction Act. This bipartisan bill would establish a new procedure under Rule XVI, modeled in part after the Byrd Rule, which would allow a 60-vote point of order to be raised against specific provisions that contain unauthorized appropriations, including earmarks, as well as unauthorized policy changes in appropriations bills and conference reports. Of importance is that successful points of order would not kill a conference report, but the targeted provisions would be deemed removed from the conference report, and the measure would be sent back for concurrence by the House.

Additionally, to ensure that Members are given enough time to review appropriations bills, our proposal would also require that conference reports be available at least 48 hours prior to floor consideration. It also prohibits the consideration of a conference report if it includes matter outside the scope of conference.

As you well know, Mr. Chairman, our bill also includes the provisions of S. 1495, which would prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, which are not amendable. While many may not see it as an important distinction, where an earmark is placed is of great importance. What we have found, is that the overwhelming majority of earmarks are found in report language - and, if I may remind my colleagues, report language DOES NOT have the force of law. Reports and the Statements of Managers which accompany bills and conference reports are to serve merely as explanations for the actions of the committee and the time has come to make it clear to all federal agencies that they should not be interpreting report language as law.

In a recent report on earmarks, CRS said "Most of these earmarks, however, are included in the Senate and House Appropriations Committees' reports explaining a measure as reported. These earmarks are also frequently included in the managers' joint explanatory statement (or managers' statement) that accompanies the conference report. **Committee reports and managers' statements do not have statutory force; departments and agencies are not legally bound by their declarations.**" In an attempt to draw attention to this often overlooked fact, last week I joined Chairman Coburn as well as Senators DeMint, Feingold, and Bayh in writing to President Bush to urge him to instruct his cabinet to ignore wasteful earmarks that are contained in any statement of managers' that accompanies a bill he signs into law.

In our letter to the President we wrote "As you know, the executive branch has the authority to exercise discretion in funding these projects. The agency can either fund the projects as prescribed in the committee reports or subject them to an open and competitive review. CRS recently found that over 95 percent of the earmarks in the Fiscal Year 2006 budget were not written into law. If your Administration would reject even some of the most wasteful earmarks, it would ensure that scarce federal funds are spent on national priorities and it would make it substantially more difficult for Congress to load up annual spending bills with earmarks."

Mr. Chairman, or bill, S. 1495, is only one of several measures that have been introduced to address the growing problem of Congressional earmarks. As I have said, the time has come to tighten our belts around here. We have an obligation to future generations of American taxpayers. We must remember that everything we do today will impact them and it is grossly unfair of us to saddle them with a deficit of hundreds of billions of dollars just so we can issue a press release to curry favor with the folks back home.

Again, Mr. Chairman, thank you for holding this hearing today on this important issue and for inviting me to share my views. I am pleased to be working with you. S. 1495 is a good bill and will go a long way in helping to protect the taxpayer's dollars - I am proud to be sponsoring it with you.

Testimony

Thomas A. Schatz,
President,
Citizens Against Government Waste
before the
Senate Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government Information, and
International Security
March 16, 2006

The Obligation of Funds Transparency Act of 2005 (S. 1495)

Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify today on behalf of the more than 1.2 million members and supporters of Citizens Against Government Waste (CAGW). We hope that this hearing will shed light on pork-barrel spending and why it is critical for Congress to move forward on S. 1495, the Obligation of Funds Transparency Act. In particular, we are grateful to Sen. McCain and Rep. Flake for introducing this legislation in the Senate and the House, and for the co-sponsors, including you, Mr. Chairman, who are supporting this bill.

CAGW was created in 1984 By J. Peter Grace and Jack Anderson after Mr. Grace presented to President Ronald Reagan the 2,478 findings and recommendations of the Grace Commission (formally known as the President's Private Sector Survey on Cost Control). If all of the Grace Commission's recommendations had been implemented, it would have saved \$424.4 billion over three years. In fact, savings from Grace Commission and other CAGW-proposed recommendations have saved \$825 billion over 22 years.

CAGW is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, has not received any federal money, and does not plan to receive any federal funds in the future.

In July, 2005 when S. 1495 was introduced, it languished on Capitol Hill like many other budget reforms in the past. But the scandal surrounding disgraced lobbyist Jack Abramoff, who pled guilty to three criminal felony counts in federal court related to the defrauding of Native American tribes, and the guilty plea on bribery and other charges by former Rep. Duke Cunningham, were enough of a shock to generate serious discussion of earmark reform. We believe the Obligation of Funds Transparency Act is a beginning, but not the end, of necessary reforms to restrict earmarks.

Mr. Chairman, you were correct when you said, "America's greatness was built on service and sacrifice, not the politically-expedient politics of pork. There is no lost Article of the Constitution or missing Federalist Paper that gives members of Congress a blank check to fund any project they desire."

Pork-barrel spending helps explain why spending is out of control and why we have a projected record deficit of \$423 billion for this fiscal year. While not large in dollars, earmarks are filled with symbolism, as the process lends itself to corruption and excess. Anyone who understands that process was not surprised when Jack Abramoff called the appropriations committees "earmark favor factories."

In 1991, CAGW published the first *Congressional Pig Book*, an unprecedented exposé of pork-barrel spending. The seven-point criteria to classify a project as pork-barrel spending were developed in conjunction with the bipartisan Congressional Porkbusters Coalition. They are:

- The project was requested by only one member of Congress;
- The project was not specifically authorized;
- The project was not competitively awarded;
- The project was not requested by the President;
- The project greatly exceeds the President's budget request or the previous year's funding;
- The project was not the subject of a hearing; and,
- The project only serves a local or special interest.

Any project that meets one or more of these criteria is duly entered into CAGW's *Congressional Pig Book* database. In 1991, CAGW cataloged 546 projects that amounted to \$3.1 billion. Sadly, Mr. Chairman, under Republican leadership and the party that claims to be in favor of smaller government, pork-barrel spending has grown exponentially. In 1996, there were 958 projects that totaled \$12.5 billion. In fiscal year 2005, appropriators stuffed 13,997 projects into the 13 appropriations bills at a cost of \$27.3 billion, both record amounts and an increase of 31 percent and 19 percent, respectively, over fiscal year 2004. The 2005 figures amounts to almost \$100 for every man, woman, and child in the United States.

Since the first *Pig Book*, CAGW has documented 66,458 projects costing \$212 billion dollars. And of course, those are just the earmarks in the appropriations bills. When members of Congress claim their little project doesn't cost that much, they are not telling the American people the truth about the total cost of all the pork that makes its way into those bills.

The time is now ripe for reforming the earmark process. With an ongoing war on terrorism that is costing our country precious lives and billions of tax dollars, and with tens of billions going to the Gulf States for hurricane relief, taxpayers are demanding more than ever that their hard-earned dollars be spent judiciously.

As a direct result of your leadership concerning the "bridges to nowhere" in Alaska, hundreds of newspaper columns and op-eds have been written exposing the problems with the earmark process. In response, there has been renewed interest in the legislation you are considering today, and the president has presented a legislative proposal that hopefully will meet the necessary constitutional requirements to enable him to strike out special interest spending and earmarks in bills. Taxpayers are upset that their tax dollars have been spent on foolish programs such as the Punxsutawney Weather Discovery Center Museum, studying Goth culture, and an indoor rain forest in Iowa.

Today, lobbying reform is one of the top issues being undertaken by Congress. Earmark legislation has a direct correlation to lobbying and frankly, earmark reform is more important to our long-term fiscal health.

To that end, we would be remiss in failing to mention that we are concerned that every citizens' right "to petition the government for a redress of grievances" found in the First Amendment is unnecessarily under attack and in danger in the current version of the Lobbying Transparency and Accountability Act of 2005 (S. 2128). Ironically, at the same time you and this subcommittee are discussing earmark reform in S. 1495, the grassroots provisions of S. 2128 would make it essentially impossible for CAGW's lobbying arm, the Council for Citizens Against Government Waste, and other anti-waste grassroots organizations, to contact their members and the general public in a timely manner to support the passage of S. 1495, as well as every other bill before Congress. With more freedom to enact legislation without fear of grassroots mailings, it would lead to more abuse of the budget process, not less.

Mr. Chairman, a number of your colleagues like to talk about Article 1, Section 9, Clause 7 of the Constitution that says, "No money shall be drawn from the Treasury but in Consequence of Appropriations made by law." But that clause says nothing about the power to include unauthorized, wasteful earmarks. The argument that eliminating earmarks somehow will transfer spending authority from Congress to the executive branch's bureaucracy is specious at best.

The vast majority of projects funded by the federal government are based on formulas agreed to by lawmakers. Potential grant recipients are supposed to seek the funding through a competitive application process at the federal, state, or local level.

Now, far too many members of Congress are micromanaging where some of this funding should go by making decisions on where to place a pedestrian overpass or a fishing access road. If members are so concerned about "nameless bureaucrats" making these decisions, why bother with grant programs or formulas? Why not earmark every penny of federal spending? While some members say they can't get funds for a "needed" road or other project in their state or district, there are no parameters to determine if that project is in fact needed. And once a road is built, suddenly a great need appears for bicycle paths, museums, theaters, and wood utilization research. The explosion of pork-barrel spending over the last two decades has invited, at worst, corruption, and at best, conflicts of interest. It has become a form of legalized bribery.

Earmarks also invite compounded wasteful spending. The following are just three examples of why even a single pork-barrel project cannot be justified. In fiscal year 2004, \$3 million was provided to the First Tee program in two separate earmarks. According to its website, the First Tee program was created "To impact the lives of young people by providing learning facilities and educational programs that promote character development and life-enhancing values through the game of golf." The organization has developed a National School Program, described as "a safe, fun and effective way to introduce school children to the basics in golf skills, etiquette and play."

Supporters of this program include the Professional Golf Association (PGA) Tour, the U.S. Golf Association, the PGA, the Ladies PGA, Titleist, Callaway Golf, Nike, ClubCar, *Golfweek*, and Augusta National Golf Club. The First Tee program has sufficient spare funds to run ads during nationally televised professional golf events.

One earmark for first tee was for \$1 million from the Department of Education's Fund for the Improvement of Education and its Character Education Program. The qualifications for that program are clearly identified on its website. Funds are intended solely for state and local education agencies, and they are disbursed through a competitive grant program. In addition, the grants are supposed to be limited to a maximum of \$500,000. Based on these criteria, First Tee was not eligible for any of this funding.

The \$1 million in funds did not show up in either of the House or Senate versions of the fiscal 2004 Labor/Health and Human Services/Education Appropriations Act. They were added in the conference. That \$1 million meant fewer funds would be available for state and local education agencies for character education, to the detriment of students in other states. In addition, since the funds were not distributed within the parameters of an existing program, officials at the Department of Education could not determine whether or how First Tee spent the money in accordance with character education guidelines.

The other \$2 million for First Tee came from the Department of Justice's Office of Juvenile Justice Programs' Community Oriented Policing Services (COPS). The COPS program began under President Clinton with the goal of adding 100,000 more police to the streets. It is safe to say that First Tee would not put one cop on the street.

In addition to the private and profitable supporters of the First Tee program, First Tee itself is part of the nonprofit World Golf Foundation (WCF), which lists Shell Corporation as a founding partner. Other sponsors of the WCF include: Enterprise Rent-a-Car, IBM, Nextel, and Wachovia. The WCF also runs the World Golf Hall of Fame. In 2004, the WCF received \$37.8 million in revenue. Clearly, the WCF has the resources to find funding for First Tee programs without having to rely on handouts from taxpayers. Or perhaps First Tee could just run fewer ads on national television and use that money to pay for its own character education program.

One of the more absurd pork-barrel projects in CAGW's lengthy list was \$273,000 for the Blue Springs Youth Outreach Unit to combat Goth culture in Blue Springs, Missouri. This earmark was added in conference to the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2002.

Rep. Sam Graves had requested the funds to study Goth culture in Blue Springs because he claimed his constituents had asked him to fight for it. At that time, some newspaper editorials suggested the federal government could save a lot of money by simply buying Goth kids bright clothes and happy music. Others took the subject matter

much more seriously. Rep. Graves issued a press release stating, “It is my hope that this funding will give the officers in the Youth Outreach Unit the tools they needed to identify Goth culture leaders preying on kids.” Blue Springs Youth Outreach Unit officer Colby Lalli told the press, “It’s not just the clothes they wear. We’re seeing kids in the unit, whether it be suicide or homicide, they’re just one more culture in our community that is at a big risk, and we need to deal with that.” Carrying this rhetoric even further, a spokesman for Rep. Graves told the *Ledger-Enquirer* that “35 kids have been identified with the Goth culture,” and “They’re doing self-mutilation, animal sacrifices, the sort or violent behavior and drug use that possibly could lead up to what happened at Columbine in 1999 with Dylan Klebold and Eric Harris.”

But then a funny thing happened. Blue Springs Youth Outreach Unit staffers finally admitted that many of the claims they made in their grant proposal were unfounded, so they returned \$132,000 of the remaining funds to the federal government.

Lastly, most Americans – hoping it was a joke – have probably heard about the \$50 million to build an indoor rainforest in Iowa. A recent editorial in the *Wall Street Journal* updated readers on the latest developments on the project and provides even more evidence why S. 1495 must become law. I am requesting that the editorial be submitted for the record.

In 2003, Senate Finance Committee Chairman Charles Grassley (R-Iowa) included \$50 million for an indoor rainforest project in Coralville, Iowa, in the Energy Policy Act of 2003 bill. When that bill failed to pass in December, 2003, Iowans for Responsible Development, critics of the project, celebrated: “It is good news for us, good news for Iowa City and Coralville,” he said. “I am glad this was turned down because it was a very mistaken project.”

Unfortunately, that victory was short-lived. Apparently, the rainforest was so indispensable that Sen. Grassley added it to the Omnibus Appropriations Bill in late January 2004. It soon became the most ridiculed federal project since Boston’s Big Dig.

The original plan was for Iowa to have the world’s largest enclosed rainforest, spanning five acres. The enormous 20-story enclosure was supposed to look like a giant foil-covered caterpillar bordering Interstate Highway 80. Scenery for the indoor natural wonder would include suspended wooden bridges 100 feet in the air, hundreds of towering Brazilian beauty leaf, and American mahogany trees. Tourists would be able to wander among a myriad of activity centers, such as an aquarium, the rainforest, learning stations, and possibly even an IMAX-style theater in what the *Des Moines Register* describes as “a kind of prairie-meets-the-Amazon setting.”

A local businessman, Ted Townsend (heir to the Townsend meat-packing fortune), came up with this idea while contemplating his legacy on a treadmill. Since then, Townsend has worked to see that taxpayers will pay dearly for his dream to be realized. Original projections put the cost of the rainforest at \$300 million; the project was scaled back to a more “reasonable” \$225 million when it was included in the 2004

Omnibus Appropriations Bill. Townsend originally pledged a generous \$10 million. However, the project would still have been \$90 million short, and it must attract 1.1 million visitors annually to pay for itself. Coralville was ready to add \$15 million for land for the complex, but no local governments were financing the project.

Water recycling and energy conservation have been promised, once the project is completed. Other than claiming the project will be an “ecological inspiration” and will utilize “environmentally focused systems,” no environmental benefits of building an indoor rainforest have been outlined.

This tropical boondoggle has some big name supporters, such as former Iowa Governor Bob Ray (R), who is the chairman of the institute Townsend founded to oversee the production of the rainforest. Ray imagines that it will solve the state’s “demographic problems” by drawing more people to move to Iowa. Ray also believes that mass quantities of retiring baby boomers will “crisscross the country” to visit the indoor rainforest. Senator Grassley claims that it will somehow help the University of Iowa.

The Midwest tropical project was expected to pump \$187 million a year into Coralville’s economy, and turn Iowa into a “defining tourism destination” which the state currently lacks. David Oman, project director for the Iowa Environmental Project (the official name of the rainforest), hopes to attract travelers on “I-80 or I-380 en route to other destinations.” Oman’s plan is very ambitious since according to consultants, most travelers (57 percent) come to Iowa to visit relatives and friends; only a few (10 percent) come for entertainment.

Outside experts are dubious that Iowa’s rainforest will draw 1.1 million tourists per year to Coralville. According to the *Des Moines Register*, “Critic Eileen Robb wrote, ‘Perhaps the best that Iowans can hope for is that [the Iowa Environmental Project] will be purchased for pennies on the dollar in the future and put to a rational economic use, as happened in March 2003 to Colorado’s Ocean Journey. The bankrupt \$93 million Denver aquarium was recently purchased for just \$13.6 million by Landry’s seafood restaurant chain. Folks in Denver will now be able to watch their fish and eat them, too.’”

Raising the final \$90 million to begin work on the rainforest may be the least of Oman’s worries. According to industry officials, attractions need to continually expand or add new features else attendance will drop dramatically. Supporters say they haven’t focused on the next stages, though plans call for an expansion five years after the planned 2008 opening.

Andrew Grossman, editor of *Inside Magazine*, heavily criticized Grassley’s rainforest project, and warned taxpayers not to be surprised “if Texas wins funding for an indoor glacier park in the 2005 budget.” At the time this funding was approved, CAGW wrote that “this project will do nothing for Iowa’s population, energy industry, or the environment, but will soak the taxpayers.”

According to the article by Michael Judge in the Thursday, March 9 wsj.com Opinion Journal that I have submitted for the record, the “struggle to parlay \$50 million in federal grant money into a \$150 million ‘world class’ environmental-education complex continues.” That amount is half of the original estimate provided in 2003.

Given recent revelations of how lobbyists work in Washington, it is no surprise – nor is it illegal – that that lead lobbyist for Mr. Townsend was John W. Conrad III, who once worked for Sen. Grassley. Mr. Conrad, according to the article, was paid \$69,500 by Mr. Townsend to lobby his former boss for the \$50 million earmark.

The article further notes that no private financing has been provided for the indoor rainforest. Sen. Grassley, in November, 2005, froze outlays in the project until it raised \$50 million in matching funds. In fact, unless that occurs before December, 2007, the grant will be withdrawn. Included in that legislation was a provision that provided the project with portability. In other words, now the Environmental Project can shop the rain forest around the whole state, instead of just restricting the construction to Coralville. While Congress still seems intent on funding the indoor rainforest, Mr. Judge wrote that “Mr. Townsend is devoting more and more time to his ‘Great Ape Trust of Iowa,’ a research sanctuary he’s built in Des Moines to study the communications habits of primates – really.”

Mr. Chairman, taxpayers around the country understand that reforms to the earmarking process must be adopted by Congress. We are not sure that enough of your colleagues understand that message. In fact, some members of Congress argue that earmarking has not lead to corruption or increase federal spending. We believe earmarking is a natural result of too much centralized control of our daily lives in Washington.

Some members of Congress believe eliminating earmarks would simply be turning spending power over to federal bureaucrats. Yet, Congress designs and funds the programs that federal agencies are carrying out.

Some members of Congress claim that it is better that local officials, rather than Washington bureaucrats, make the decisions on where funding should occur. We agree but we think that doesn’t mean members of Congress get to decide. Instead, most of these programs should be paid for out of local taxes, or even private dollars, not federal tax dollars. After all, it is highly unlikely I will ever use a bike path in Montana.

S. 1495 represents a good beginning on getting a handle on pork-barrel spending. We would like to see, if possible, a similar approach extended to other bills, such as the transportation bill that was just re-authorized last year. In particular, we find the provisions in S. 2265, the Pork-Barrel Reduction Act, particularly worthy and these too should be pursued. On behalf of our members, I am gratified that these bills address several of the seven criteria that CAGW uses to identify pork-barrel spending.

In conclusion, S. 1495 is a worthy piece of legislation. No longer should funds be allocated to a program based on a member’s seniority and clout. Instead, taxpayers should only fund government programs based on their merit and only if they have been proven to be effective.

I thank you for this opportunity to present our opinion on this legislation.

“Earmark Reform – Understanding the Obligation of Funds Transparency Act”

**Testimony of Steve Ellis
 Vice President of Programs, Taxpayers for Common Sense Action
 before
 Subcommittee on Federal Financial Management, Government Information, and
 International Security
 Senate Homeland Security and Government Affairs Committee Hearing**

March 16, 2006

Good afternoon Chairman Coburn and members of the subcommittee. I am Steve Ellis, Vice President of Programs at Taxpayers for Common Sense Action, a national, non-partisan budget watchdog. As a persistent critic of the budget deficit, wasteful federal spending, and Congressional spending priorities – or lack thereof - I pledge to you today that we stand ready to work with you to rein in earmarks and get S. 1495, the Obligation of Funds Transparency Act of 2005 enacted.

Taxpayers for Common Sense Action strongly believes in making earmarks and the legislative process, particularly the appropriations process, fully transparent and more accountable. By denying funding for report provisions that are not in the underlying law, S. 1495 helps force earmarks out of the shadows and into the light of open debate.

What are we up against? Well, as everyone on this panel is painfully aware, earmarking – the practice of including legislative provisions that specify certain discrete projects or entities to receive federal funding – has exploded in recent years. Just about every organization and member of Congress has their own general definition of an earmark – each of which is maybe 90% the same as every other definition. Earmarks are like pornography, maybe in more ways than one, but I’m referring to the late Supreme Court Jurist Potter Stewart’s observation that he couldn’t define pornography but that he knew it when he saw it. Well, we all know an earmark when we see it.

According to the Congressional Research Service (CRS), earmarks have skyrocketed over the last decade. The CRS analysis found that there were 4,126 earmarks in FY1994 worth \$29.6 billion, which increased to 6,073 earmarks worth \$36.4 billion in FY2000. By FY2005 there were 15,877 earmarks worth \$47.4 billion.¹ That’s a 285% increase in the number of earmarks since FY94, and a 60% increase in the cost of those earmarks.

¹ Congressional Research Service Memorandum. Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005. January 26, 2006. CRS analyzed each bill individually, using bill-by-bill definitions of earmarks. TCS aggregated this data. Also, CRS compiled costs in current year amounts, TCS inflated these amounts to constant 2005 dollars.

TCS's own analysis of the earmarks in FY2005 found that there were 15,584 earmarks worth \$32.7 billion.² Our preliminary analysis of the FY2006 appropriations bills found that the totals are down, but still far outstrip levels from a decade ago.

The problems with earmarking are many. The process itself is resource intensive, absorbing a lot of time and staff work to develop the earmarks, obtain them, and execute them. It also diverts resources from other more important governmental activities, invariably increasing costs and waste and delays the delivery of justified government services. Finally, earmarks are, in the words of Rep. Jeff Flake (R-AZ), the "currency of corruption." Diverting taxpayer money to pet projects is a positive feedback loop of lobbying, campaign cash and legislative paybacks. Like any feedback loop, to stop it, you must interrupt it.

I would like to point out a few examples of the problems with earmarking.

One area you would think we could all agree on is that adequately providing for our men and women in uniform is of the utmost importance. Evidently, some members of congress think some other items are of utmost importance like the Outdoor Odyssey adventure camp in Boswell, PA and paying for Montana's Lewis & Clark bicentennial activities, both of which were among the 2,837 earmarks worth \$11.2 billion in the FY06 defense appropriations bill. That's up from 62 earmarks worth \$8.9 billion in 1980 and a dozen earmarks worth \$5.6 billion in the 1970 defense appropriations bill. As you can see, the average earmark in 1970 was worth \$466 million compared to the average 2006 earmark being \$3.9 million. You could argue that those dozen 1970 earmarks worth nearly a half-billion dollars may have each represented legitimate policy disagreements between the executive and legislative branches, but it's clear that the \$3.9 million average earmark in 2006 represented members of congress eager to steer federal dollars, defense dollars, back home for pork barrel needs and political favors.³

Earmarking dilutes the effectiveness of federal spending. In the case of defense, lawmakers are focused on protecting their local district's military industrial base or worse, toward lobbying interests, instead of focusing funding programs relative to their necessity for national security. Defense programs should be funded relative to their national security merits, not the strength of the political muscle backing them. Programs receiving earmarks are not necessarily underfunded to begin with, nor are they necessarily of any strategic importance, nor are they awarded for merit. Earmarks undergo no independent review, making it impossible to distinguish between truly meritorious projects and those that are pure pork. Despite congressional members' lofty rhetoric about putting our soldiers first, the earmarks they lavish on their districts are usually unrelated to current operations.

² Ken Silverstein. *Harper's Magazine*. "The Great American Pork Barrel." July 2005. Page 32.

³ Austin Clemens. Taxpayers for Common Sense. "DEFENSE PORK REACHES RECORD HIGH: Instead of Cutting, Congress Pays it Forward to the Supplemental" and data from FY2006 Defense Appropriations Act.

Last year's highway bill, which had a record \$24 billion in earmarks, made the spoils of power quite clear. In the House of Representatives, the average allocation by lawmaker was \$12.8 million, junior members of the committee got about \$40 million and up, senior committed members got \$60 million and up. Ranking member Jim Oberstar got \$225 million, Chairman Don Young got a little over \$1 billion. Leadership in both parties got \$100 million and up. It was a simple formula, one that meant that powerful members got all of their wildest dreams enacted into law – including Rep. Young's infamous “bridges to nowhere” – with many less powerful lawmakers waiting for their turn at future troughs.

Even revenue bills are getting pockmarked with earmarks. When Congress finally passed the Foreign Sales Corporation / Extra-Territorial Income (FSC/ETI) bill, what was supposed to be fix for a \$5 billion trade-distorting subsidy became a \$140 billion Frankenstein's monster larded up with tax provisions to benefit bow and arrow manufacturers, professional sports team owners, fishing tackle box manufactures, and shopping mall developers, just to name a few.⁴ No wonder the federal tax rules have gone from 40,000 pages to more than 55,000 over the last decade.⁵

The U.S. Army Corps of Engineers is an agency that lives and dies by the earmark. In the CRS analysis of earmarks, it noted that most Corps funding (along with U.S. Bureau of Reclamation and Department of Energy in the Energy and Water Appropriations bill) is earmarked.⁶ The Corps' budget is built project by project, so it has never met a boondoggle it didn't like. Every year when the President's budget comes out, the Corps has their budget briefing at Headquarters where they provide a document listing the funding for every project in the President's budget. More than 100 pages with the projects conveniently broken down by state – easy reference for Congress to determine which projects OMB thought were naughty or nice so to speak. The President's FY07 Budget proposal zeroed out 532 projects that Congress funded in FY06. How many of those will make it back on the list, virtually all I bet. What happens is Congress increases the budget a bit, but increases the number of projects receiving funding dramatically. We're spreading the money farther and thinner, which invariably means that projects take longer to construct – increasing costs and delaying benefits – and that maintenance is deferred.

Louisiana's Corps projects have gotten a great deal of attention lately. In the President's FY06 budget proposal there were 41 line items or projects solely for Louisiana, worth \$268 million. That works out to \$6.5 million per project on average. The House E&W bill came in with 39 line items or projects, \$254 million, again in the neighborhood of \$6.5 million per project. The Senate stuffed in 71 line items or projects to the tune of

⁴ Keith Ashdown. Taxpayers for Common Sense. TCS Statement on the Conference Agreement on the Corporate Tax Legislation. October 6, 2004.

⁵ Chris Edwards. Cato Institute. 10 Outrageous Facts About the Income Tax. April 15, 2003. The total includes the tax code, regulations and various IRS rulings.

⁶ Congressional Research Service Memorandum. Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005. January 26, 2006. page 15.

\$375 million – but that averages out to \$5.3 million per project. So again, more projects, less money.

Let's look at one particular project – replacing the navigation lock on the Industrial Canal in New Orleans. Full disclosure here, TCS has named this \$750 million project – the most expensive single lock in history – the fifth most wasteful Corps of Engineers project in the country. In the FY06 budget, the President provided no funding for the project. The House pilfered other projects and came up with \$9 million for construction. The Senate pumped in another \$15 million. Despite what some want to believe around here, money doesn't grow on trees. It had to come from somewhere. I can tell you where \$3 million may have come from. The Senate skimmed it off the top of a hurricane protection project for New Orleans called the Westbank and Vicinity project which got \$28 million in the President and House budgets, but only \$25 million in the Senate's.

The American Association for the Advancement of Science (AAAS) is understandably interested in increased research and development funding across the board. You might think that AAAS would stand side-by-side with lawmakers who feel they know better where to spend research dollars than federal bureaucrats, pushing for more earmarked science funding. Instead, AAAS notes in a recent statement, “[a]lthough earmarked funds have been increasing steadily over the past several decades by all accounts the dramatic explosions in R&D earmarks in 2005 and 2006 coincide with flattening and even declining R&D budgets, meaning that earmarks cut into competitive programs instead of adding to them.”⁷ R&D earmarks came to \$1.5 billion in FY02, in FY06 that had jumped to \$2.4B in FY06.⁸ One area, Department of Energy R&D programs are more than 20% earmarked. Biomass R&D, the program that's supposed to end our country's addiction to foreign oil, is more than 50% earmarked.⁹ If we are serious about shifting from an oil economy, it is necessary to reduce R&D earmarks to ensure that we are funding only the best science.

Okay, we know it's a problem. Well at least those of us in the room know earmarks are a problem. How do we get it under control?

We could try prescriptive solutions like establishing targets, limiting the number of earmarks to members, but that's not really going to address the problem and in the end command and control solutions are unlikely to succeed. Besides, as Rep. Flake pointed out, “[c]ertainly, any meaningful earmark reform will reduce the total number of earmarks. However, simply limiting the number of earmarks Members can receive is not enough. Only limiting the number of earmarks will merely result in bigger earmarks. Earmark reform must include transparency and accountability, and any proposal without those components is incomplete.”¹⁰

⁷ AAAS R&D Funding Update. R&D Earmarks Hit New Record of \$2.4 Billion, Up 23 Percent. January 4, 2006. page 4.

⁸ *Ibid.* page 1. In fact, the House and Senate appropriations bills came in at \$1.2 billion and \$1.5 billion respectively, it wasn't until conference when the \$2.4 billion hit.

⁹ *Ibid.* page 3.

¹⁰ Rep. Jeff Flake. Press Release “Proposal Lacks Accountability and Transparency”. January 25, 2006.

So the first step is to make the earmarking a budgeting process as transparent as possible. Interestingly, and I believe, effectively, S. 1495 goes at this from the opposite direction than most proposals. Instead of requiring that earmarks be included in legislative language, the bill prevents expending funds on any earmark that isn't part of the law, essentially rendering any earmark that isn't in the bill worth little more than the paper it is printed on.

The second step is to get earmarkers to own up to their work. Although many members of Congress issue press releases touting bacon brought back to their districts, it is difficult to sift through all of these, some are sent only to local media outlets and not made public on the lawmakers' web site, and there is no central system to catalog them. Instead, every earmark request should be made public in as close to real time as possible, they should be placed on the Appropriations Committee web site within 24 hours of their arrival, or at least by the committee deadline for submission of earmark requests. This will enable constituents to know what their elected representative or Senator is seeking. Additionally, each earmark in the final legislation should be accompanied by the name of the requesting member or members of Congress. This would likely be in the report accompanying the bill. Any amplifying information on the earmark should also be included.

Next, we have to define earmarks. As I alluded to earlier, this is a difficult task. We should not get too hung up on this however. Since we are not establishing earmark limits or even saying that an earmark is pork per se, there shouldn't be concern with using as broad a definition as possible. In general, it should be provisions that are directed to specific entities or specific locations. These provisions could appear in appropriations, authorizations and revenue bills. Finally, and this differs from S. 1495, all entities should be included, private, non-federal and federal. To leave out federal entities entirely as envisioned by S. 1495 would leave many earmarks such as those for defense or Corps of Engineers projects untouched.

For any real earmark transparency or reform proposal to work, it has to have teeth. S. 1495 has some teeth - if it's not in the legislation itself, it doesn't get funded. But just because an earmark is in the law, that doesn't necessarily make it worthwhile. We need to have effective tools to highlight and possibly remove egregious earmarks, particularly those added late in the legislative process such as in conference committee. Earmarks included for the first time in conference are particularly troubling as these projects have received far less scrutiny than ones added earlier in the legislative process and there is less time and tools to tackle them. Establishing points of order and other tools to open up conference documents would help rein in wasteful spending.

Building on my earlier comments, any substantive earmark reform and transparency proposal must also target non-appropriations earmarks. Revenue bills and direct spending bills such as the transportation bill can have a real and longer term revenue effect than annual appropriations bills. Additionally, omnibus authorization bills such as the Water Resources Development and the Energy Bill essentially establish the earmark

menu to be pursued in the appropriations process. If we can interrupt the cycle or reduce the earmark demand we will be more effective in limiting the earmark output.

Considering our concern with earmarks and runaway federal spending it is not surprising that Taxpayers for Common Sense Action is disappointed that the President seems to have locked the veto pen in a drawer and thrown away a key. We fully support the President's efforts to find another pen, including the recently proposed "line item veto." While not a true line item veto, this enhanced rescission authority could serve as a very useful tool to highlight wasteful spending and make Congress take a second look at pork while justifying to the rest of the country that this is worthwhile use of federal tax dollars.

We have seen the problems with earmarking. Duke Cunningham's schemes to profit off the backs of taxpayers was only possible because earmarking was the norm and unexceptional. Jack Abramoff called appropriations bills "favor factories" because of the payoff opportunities. Rep. Ralph Regula (R-OH) stripped Democrat's earmarks from the FY04 Labor-HHS appropriations bill to enforce discipline since they had not voted for an earlier version of the bill. Earmarks are the direct result of a corrupt process that encourages and rewards lawmakers scrutinize and fight over the minutiae, to spend their time not legislating and conducting oversight, but pulling money in million dollar chunks back to their home districts and their political patrons.

We have a small window of time to enact meaningful change to enable us rein in earmarking pork barrel spending. Taxpayers for Common Sense Action stands ready to work with you and other members of Congress to make "Obligation of Funds Transparency Act of 2005" and other reform legislation into law. There are no silver bullets out there to get earmarking and overall federal spending under control, but this bill could be a hammer in our tool box working to build a responsible federal budget.

Thank you again for inviting me to testify and I would be happy to answer any questions you might have.

Draft Statement of Scott Lilly
Senior Fellow, Center for American Progress
Before the
Subcommittee on Federal Financial Management, Government
Information, and International Security
Committee on Homeland Security and Governmental Affairs
United States Senate

March 9, 2006

Mr. Chairman, Senator Carper, Members of the Committee, I want to thank you for holding this hearing and inviting me to appear as a witness. This is an important topic and we are in a period in which public awareness of the problem we are here to discuss offers a potential for significant reform. Almost everyone is aware that the practice of earmarking has grown exponentially over the course of the past decade. While the practice continues to have its defenders even some hardened veterans in the art of winning federal funds for the folks back home admit privately that the practice has grown out of control.

But meaningful reform is usually dependent upon understanding the processes that we are concerned about, understanding exactly why those processes have become problems and finally, understanding the potential side affects of proposed solutions. Many of the harshest critics of earmarks have spent too little time considering each of these issues.

The first impediment reformers face in dealing with earmarks is the ability to define them. The General Accountability Office has spent years attempting to develop a standardized and useable definition. The Congressional Research Service has produced a different definition with respect to each separate appropriation bill and their definition(s) continues to change with each rewrite they produce on the subject.

One of the most prominent critics of the subject defines earmark on his website as an item “not properly authorized by the Senate” and “not requested by the Administration.”

I don’t think either of these criteria pass the laugh test.

The distinction between authorization and appropriation are obscure to most Americans. The Congress creates the legal authority for the executive branch to engage in specific activities through one set of laws called authorizations while providing the actual year to year funding necessary to engage in those activities in another set of laws called appropriations. This definition seems to argue that decisions made in the authorization process do not constitute earmarks while decisions made in the appropriation process are considered suspect. One needs to look no farther than the famous “bridge to nowhere” to find the utility of this definition. That symbol of how far off base the Congress has

drifted with respect to earmarking was the product of the Safe Accountable Flexible Efficient Transportation Equity Act—an authorization. The fact that the funds in question could be used by the Alaska Department of Transportation is the result of an action taken on an Appropriation Bill.

Earmarking occurs regularly on a wide range of authorization bills and on tax legislation as well. Just last year we saw large sums of money earmarked to a Utah Cancer Hospital in amendments to the Medicare Act and special tax breaks to the manufacturers of fishing tackle boxes added to the energy bill.

What about the second criteria: “not requested by the Administration.”

That seems to me to argue that the only politicians in Washington are on Capitol Hill. But we know that each Administration has thousands of political appointees who are placed in positions to make budget policy from the Office of Management and Budget straight down to the staff of cabinet secretaries, agency heads. Their number one job is to protect the president and that often means directing federal resources to states of political importance.

Career bureaucrats play with earmarks as well. When there is too little room in the budget to accommodate all programs that the bureaucracy sees as essential to accomplishing their assigned mission, it is not infrequent that items that are needed the most will be the ones that will be left out. That is simply because those are the items that the executive branch can most comfortably rely on the Congress to restore.

For years the Pentagon under both Democratic and Republican Administrations has cut funds for military family housing in the President’s budget request. That was not because of a policy difference between the White House and the Congress over whether our troops were living in too much luxury, but rather because clever executive branch budget officers knew that the Congress fully concurred in Defense Department estimates that a large portion of military family housing was far below acceptable minimums, that failure to provide decent housing was adversely affecting reenlistments and forcing the services to pay higher bonuses to keep the most skilled and valued officers and non commissioned officers. Therefore, family housing could safely be cut to allow Pentagon planners to place money in weapon systems and other priorities where the job of selling Congress would be more difficult.

When the Pentagon begins circulating its list of “unmet requirements” and the Armed Services and Appropriations Committees feel compelled to respond it is often for good reason.

So if those are not good criteria for defining earmarks what is a good definition?

I think if you ask ordinary citizens what the term earmark means to them you might get an answer something like this: When the government grants of something of value that

belongs to the entire country to a specific community, company, organization or individual based on parochial political interests rather than broader national priorities.

While I think that definition gets at the heart of what we are talking about, it leaves us in a very sticky situation with respect to determining whether a particular item is or is not an earmark.

Let me give you an example. A member of the House who has a great deal of influence over military spending had a long term, ongoing argument with the U.S. Army over the question of whether or not enough of our Humvee fleet had the steel plating needed to protect soldiers from independent explosive devices. There were those in the Pentagon who argued that they needed priorities such as the Crusader artillery piece much more than they needed more heavily armored Humvees. They also pointed out that while the plant that did the “up-armor” work for the Army was not in this member’s district, it was in the same state and not too far outside the district.

The only person who knows for sure what motivated this particular Member of Congress to fight for more “up-armor” Humvees is the Member himself. What everybody knows now in retrospect is that he was right.

If earmarking is putting politics ahead of sensible policy and I think that is what it can be reduced to, then we are in a large number of instances stuck with the very squishy issue whether the arguments made in behalf of good policy were really about politics which means we have to guess about motives. Sometimes that seems relatively easy to do as it does with the “bridge to nowhere” but in a large number of instances we have reasonably good substantive arguments in behalf of a particular action which happen to coincide with the political priorities of powerful people.

That leads us to a second important question: “What is wrong with earmarking in the first place?”

Some of the most frequently repeated arguments against earmarks are not well supported by fact. Earmarks are not substantially increasing federal outlays or adding in a significant way to the growth of the public debt. If we limit the definition of earmarks to include only district oriented increases above the amounts requested by the President we probably have less than \$14 billion worth in all 11 appropriation bills. That is less than 2% of discretionary spending—and discretionary spending accounts for only about a third of federal outlays.

Furthermore, that 2% is not money that in most instances was added to either the President’s budget or above the amounts permitted by Congressional Budget Resolutions. It is money that has been carved out of other priorities within the budget.

Finally, I think it is important to point out that a large majority of earmarks are not for blatantly wasteful purposes. Most Senators and House Members work reasonably hard to identify needs in their states and districts that are considered a significant priority by their

constituents and which would provide real value to the communities in which they are directed.

Despite these facts there are strong reasons to be concerned about the explosion that has taken place in Congressional earmarking.

One reason is that the geographic distribution of earmarks is anything but fair. Look at last years highway bill. The state of Alaska with slightly more population than the average Congressional District got more than \$1 billion of the \$23 billion in earmarks in the entire bill. It got about twenty times the amount of the average Congressional District. Bakersfield, California, a city that does not have the nation's most pressing traffic problems got more than \$700 million—probably more than all of the earmarks going to the city of Los Angeles a city internationally known for its transportation problems. Despite the fact that the average Congressional District will pay \$50 million in gas taxes to cover the cost of the \$23 billion in earmarks contained in the legislation, most districts will get only a fraction of that amount.

Earmarks are directing a substantial amount of money intended to help disadvantage populations into middle and upper middle income portions of the country.

A second reason for concern is that although many and arguably most earmarks are of reasonable quality and provide reasonable value, many of the ones that are bad are really bad. They have a corrosive effect on government generally and they lower the standards and expectations of both the recipients of government services and those whose job it is to make the services available.

Equally disturbing is the growing prospect that earmarks are being used illicitly. The Cunningham bribery scandal opens the question of whether there are other cases in which unscrupulous contractors have persuaded members to support earmarks not based on what it might do for their Congressional Districts but what it could do for them personally. There is no question that a nexus has developed between campaign fund raising and the community that advocates in behalf of earmarks. The more earmarks a Senator or Congressman is able to win for a local university, hospital or city government or art museum, the more lobbyists he may expect to find in attendance at his fundraisers.

There is also a corruption that is occurring in the legislative process itself. Earmarks are increasingly used to persuade members to support legislation that they might otherwise oppose in the absence of such earmarks. In the House this practice is now being extended to the granting of earmarks in one piece of legislation in return for members vote for or against a separate and unrelated legislation. Chairman Thomas joked openly about the delay in consideration of the Highway bill last summer so that the leadership could gain more support for the Central America Free Trade Agreement. Whether or not you support CAFTA, this means of writing our nation's laws must be troubling to anyone who believes deeply in the role of an elected representatives should play in insuring that the voice of the people should be heard in the chambers of power.

The dramatic growth in earmarks affects our democracy in another way. While we perhaps too often think of American politics as the contest between the two political parties there is another contest which in each election determines how reflective our representative system will be of the voters who are supposed to control it. That is the battle between incumbents and challengers. If incumbents never lose the whole system begins to be meaningless. But if incumbents are able to handout growing amounts of money once controlled by the executive branch to specific charities, schools, foundations and so forth they become significantly harder to defeat regardless of how they have voted on the issues of the day or how unreflective their lifestyles, public demeanor or policy positions become relative to the people they supposedly represent.

But there is another consequence of earmarks that is perhaps even more corrosive to Constitutional Democracy—one that I do not believe was intended but one which is none the less real. The value of earmarks is perceived to be so great by such a large share of the membership of both parties in both houses that it has come to dominate their daily agenda.

Congress no longer spends much time in Washington and when they are here the dominant question is all to often earmarks. The more earmarks that are granted the more city, county and local government learn of the new source of funds and decide to journey to Washington and attempt to see their Senators and their Congressman about how to get their name on the list. The more they come, the more time legislators spend in meetings focused on earmarks.

This affects not only members but also staff. Staff that might have once been allocated to preparing a Senator for hearings now must be devoted to processing earmark requests. And this affects not only the staff in the personal offices of Senators but the core staff of key committees who are at the cutting edge of the institutions capacity to oversee the government for which they are responsible.

Last year the Appropriations Subcommittee that funds the Departments of Labor, Health and Human Services and Education received more than 15,000 separate requests for earmarks. If each had been written on a single sheet of paper the requests would have created a stack of paper more than ten feet high. All of these must at a minimum be logged into computer data bases, matched against other projects and reviewed to determine if there is legal authority to appropriate funds for the activity requested. There are often numerous conversations that must take place between a member and his staff, the member requesting the project and the chairman or ranking member of the committee of jurisdiction, the member requesting the project and the staff of the committee and between committee staff on the legality and propriety of the earmark. In short the explosion in earmarking has greatly changed the work that Congress does, the way time is used and ability of key committees to play any effective role in oversight.

The burden that this process places on a conscientious member of the House or Senate should not be understated. If you divide the number of earmarks in the bill by the

number of Congressional Districts in the country, you have about 15 earmarks per district. If one were to determine the 15 most critical traffic problems within a Congressional District one would need to do a lot of research. One would need to compare dozens of intersections, entrance and exit ramps, planned bypasses and streets which have been proposed for widening or additional lanes. One would need traffic flow data, site specific accident data, as well as rush hour congestion data.

No matter how hard a Senate or House office tried to do that job, it would absorb virtually all resources and result in a product of limited value in establishing effective priorities. It is precisely this kind of research that we employ the large bureaucracies in state highway departments and local planning agencies to conduct.

What has happened is an implicit deal between the executive branch and those in the Congress desiring more and more earmarks. We will allow you to make a fool of yourself on the 2% of the federal budget that you earmark if you will give us free reign over the other 98% of federal spending.

That means that the Congress is not performing its Constitutional responsibility to hold the federal bureaucracy accountable, to ask hard questions and force public debate—particularly when those in charge of writing the checks don't have a clear plan on how to spend it and how to insure that we get a product that is worthwhile to the taxpayer.

It is the 98% of federal discretionary spending that is not earmarked makes a real difference in what life will be like for our citizens. Do our diplomats, military leaders and intelligence experts understand the real threats that we face? Are we being smart in terms of what portion of the spectrum we sell and how we sell it? Do those blocking illegal immigration have the resources and leadership they need to succeed? These are question that the clamor for earmarks has drowned out. But it is how effectively Congress asks those questions that will determine whether it is viewed by historians as having met its Constitutional role or failed as a supposedly coequal branch of government.

Reforming the current system of earmarking will not come about easily. The Constitution gives the Congress the power of the purse and it can not be and I would emphasize it should not be taken away by statute.

If anything, the current state of our government provides arguments for strengthening rather than weakening the innate powers granted to the legislative branch. True reform is dependent on the nation recognizing the pitfalls of earmarking and electing Members who will use the powers of the purse more judiciously. This is not a mere pipe dream. The temptation to earmark has always been present. But in our life time we have had leaders who followed a moderate and frugal course with respect to this practice.

Edward Boland of Massachusetts chaired the Veterans, Housing and Urban Development and Independent Agencies Subcommittee of the House Appropriations Committee for nearly two decades and during that period rarely if ever allow earmarks to be inserted

into that bill. During much the same period Bill Natcher of Kentucky chaired the Labor Health and Human Services and Education Committee. Natcher kept that huge bill Earmark free until the time of his death in 1994 and it was not until three years later that the first major earmarking occurred in the Labor-HHS-Education bill.

These were powerful men who had to standup repeatedly to their Senate counterparts and their House colleagues over their reluctance to insert earmarks. But they were also supported or at least tolerated by leaders who knew that as enjoyable as the use earmarks can be, they are also dangerous can eventually become a huge embarrassment to the institution that they as leaders had a unique responsibility to protect.

The so-called, “line item veto” proposal put forward by the President last week is neither a line item veto nor effective medicine against the current excess of earmarking. The president already has the power to propose rescissions. Requiring a vote within a certain period of time after the rescission is proposed only establishes a time frame in which the Congress must decide whether or not to reverse decisions that it has already made.

The Constitution also gives the President a great deal of power which he can use to force the Congress to behave responsibly. That power is the veto and in the midst of this explosion in earmarks we have a President who refused to use his veto pen once in a four year term for the first time since John Quincy Adams left the White House in 1829.

If the President is serious in his opposition to earmarks he should establish limits on earmarking in each bill and threaten to veto any bill that exceeds those limits. The same strategy could be adopted by those in Congress who want to see the practice curtailed. They could negotiate new tighter limits on a bill by bill basis and build a coalition of those who would vote down any bill that they felt exceeded those limits.

